

7-1-101. Title.

This title is known as the "Financial Institutions Act."

Amended by Chapter 200, 1994 General Session

7-1-102. Legislative findings, purpose, and intent.

(1) The Legislature finds it is in the interest of the citizens of this state, and is the purpose of this title, to:

(a) supervise, regulate, and examine persons, firms, corporations, associations, and other business entities furnishing depository, lending, and associated financial services in this state;

(b) protect the interests of shareholders, members, depositors, and other customers of financial institutions operating in this state;

(c) preserve the competitive equality of state chartered institutions as compared to federally chartered institutions, and of Utah depository institutions as compared to out-of-state and foreign depository institutions;

(d) promote the availability, efficiency, and profitability of financial services in the communities of this state;

(e) preserve the advantages of the dual banking system;

(f) cooperate with federal regulators and regulators from other states in regulating financial institutions, in improving the quality of regulation, and in promoting the interests of this state in interstate matters; and

(g) provide to the Commissioner of Financial Institutions sufficient powers and responsibilities to carry out these purposes.

(2) It is the intent of the Legislature that the provisions of this title be interpreted to promote these purposes.

Repealed and Re-enacted by Chapter 49, 1995 General Session

7-1-103. Definitions.

As used in this title:

(1) (a) "Bank" means a person authorized under the laws of this state, another state, or the United States to accept deposits from the public.

(b) "Bank" does not include:

(i) a federal savings and loan association or federal savings bank;

(ii) an industrial bank subject to Chapter 8, Industrial Banks;

(iii) a federally chartered credit union; or

(iv) a credit union subject to Chapter 9, Utah Credit Union Act.

(2) "Banking business" means the offering of deposit accounts to the public and the conduct of such other business activities as may be authorized by this title.

(3) (a) "Branch" means a place of business of a financial institution, other than its main office, at which deposits are received and paid.

(b) "Branch" does not include:

(i) an automated teller machine, as defined in Section 7-16a-102;

(ii) a point-of-sale terminal, as defined in Section 7-16a-102; or

(iii) a loan production office under Section 7-1-715.

- (4) "Commissioner" means the Commissioner of Financial Institutions.
- (5) "Control" means the power, directly or indirectly, to:
 - (a) direct or exercise a controlling influence over:
 - (i) the management or policies of a financial institution; or
 - (ii) the election of a majority of the directors or trustees of an institution;
 - (b) vote 20% or more of any class of voting securities of a financial institution by an individual; or
 - (c) vote more than 10% of any class of voting securities of a financial institution by a person other than an individual.
- (6) "Credit union" means a cooperative, nonprofit association incorporated under:
 - (a) Chapter 9, Utah Credit Union Act; or
 - (b) 12 U.S.C. Sec. 1751 et seq., Federal Credit Union Act, as amended.
- (7) "Department" means the Department of Financial Institutions.
- (8) "Depository institution" means a bank, savings and loan association, savings bank, industrial bank, credit union, or other institution that:
 - (a) holds or receives deposits, savings, or share accounts;
 - (b) issues certificates of deposit; or
 - (c) provides to its customers other depository accounts that are subject to withdrawal by checks, drafts, or other instruments or by electronic means to effect third party payments.
- (9) (a) "Depository institution holding company" means:
 - (i) a person other than an individual that:
 - (A) has control over any depository institution; or
 - (B) becomes a holding company of a depository institution under Section 7-1-703; or
 - (ii) a person other than an individual that the commissioner finds, after considering the specific circumstances, is exercising or is capable of exercising a controlling influence over a depository institution by means other than those specifically described in this section.
- (b) Except as provided in Section 7-1-703, a person is not a depository institution holding company solely because it owns or controls shares acquired in securing or collecting a debt previously contracted in good faith.
- (10) "Financial institution" means any institution subject to the jurisdiction of the department because of this title.
- (11) (a) "Financial institution holding company" means a person, other than an individual that has control over any financial institution or any person that becomes a financial institution holding company under this chapter, including an out-of-state or foreign depository institution holding company.
 - (b) Ownership of a service corporation or service organization by a depository institution does not make that institution a financial institution holding company.
 - (c) A person holding 10% or less of the voting securities of a financial institution is rebuttably presumed not to have control of the institution.
 - (d) A trust company is not a holding company solely because it owns or holds 20% or more of the voting securities of a financial institution in a fiduciary capacity, unless the trust company exercises a controlling influence over the management or

policies of the financial institution.

(12) "Foreign depository institution" means a depository institution chartered or authorized to transact business by a foreign government.

(13) "Foreign depository institution holding company" means the holding company of a foreign depository institution.

(14) "Home state" means:

(a) for a state chartered depository institution, the state that charters the institution;

(b) for a federally chartered depository institution, the state where the institution's main office is located; and

(c) for a depository institution holding company, the state in which the total deposits of all depository institution subsidiaries are the largest.

(15) "Host state" means:

(a) for a depository institution, a state, other than the institution's home state, where the institution maintains or seeks to establish a branch; and

(b) for a depository institution holding company, a state, other than the depository institution holding company's home state, where the depository institution holding company controls or seeks to control a depository institution subsidiary.

(16) "Industrial bank" means a corporation or limited liability company conducting the business of an industrial bank under Chapter 8, Industrial Banks.

(17) "Industrial loan company" is as defined in Section 7-8-21.

(18) "Insolvent" means the status of a financial institution that is unable to meet its obligations as they mature.

(19) "Institution" means:

(a) a corporation;

(b) a limited liability company;

(c) a partnership;

(d) a trust;

(e) an association;

(f) a joint venture;

(g) a pool;

(h) a syndicate;

(i) an unincorporated organization; or

(j) any form of business entity.

(20) "Institution subject to the jurisdiction of the department" means an institution or other person described in Section 7-1-501.

(21) "Liquidation" means the act or process of winding up the affairs of an institution subject to the jurisdiction of the department by realizing upon assets, paying liabilities, and appropriating profit or loss, as provided in Chapter 2, Possession of Depository Institution by Commissioner, and Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies.

(22) "Liquidator" means a person, agency, or instrumentality of this state or the United States appointed to conduct a liquidation.

(23) (a) "Money services business" includes:

(i) a check casher;

(ii) a deferred deposit lender;

- (iii) an issuer or seller of traveler's checks or money orders; and
- (iv) a money transmitter.
- (b) "Money services business" does not include:
 - (i) a bank;
 - (ii) a person registered with, and functionally regulated or examined by the Securities Exchange Commission or the Commodity Futures Trading Commission, or a foreign financial agency that engages in financial activities that, if conducted in the United States, would require the foreign financial agency to be registered with the Securities Exchange Commission or the Commodity Futures Trading Commission; or
 - (iii) an individual who engages in an activity described in Subsection (23)(a) on an infrequent basis and not for gain or profit.
- (24) "Negotiable order of withdrawal" means a draft drawn on a NOW account.
- (25) (a) "NOW account" means a savings account from which the owner may make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties.
 - (b) A "NOW account" is not a demand deposit.
 - (c) Neither the owner of a NOW account nor any third party holder of an instrument requesting withdrawal from the account has a legal right to make withdrawal on demand.
- (26) "Out-of-state" means, in reference to a depository institution or depository institution holding company, an institution or company whose home state is not Utah.
- (27) "Person" means:
 - (a) an individual;
 - (b) a corporation;
 - (c) a limited liability company;
 - (d) a partnership;
 - (e) a trust;
 - (f) an association;
 - (g) a joint venture;
 - (h) a pool;
 - (i) a syndicate;
 - (j) a sole proprietorship;
 - (k) an unincorporated organization; or
 - (l) any form of business entity.
- (28) "Receiver" means a person, agency, or instrumentality of this state or the United States appointed to administer and manage an institution subject to the jurisdiction of the department in receivership, as provided in Chapter 2, Possession of Depository Institution by Commissioner, and Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies.
- (29) "Receivership" means the administration and management of the affairs of an institution subject to the jurisdiction of the department to conserve, preserve, and properly dispose of the assets, liabilities, and revenues of an institution in possession, as provided in Chapter 2, Possession of Depository Institution by Commissioner, and Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies.
- (30) "Savings account" means any deposit or other account at a depository institution that is not a transaction account.

- (31) "Savings and loan association" means:
- (a) a federal savings and loan association; and
 - (b) an out-of-state savings and loan association.
- (32) "Service corporation" or "service organization" means a corporation or other business entity owned or controlled by one or more financial institutions that is engaged or proposes to engage in business activities related to the business of financial institutions.
- (33) "State" means, unless the context demands otherwise:
- (a) a state;
 - (b) the District of Columbia; or
 - (c) the territories of the United States.
- (34) "Subsidiary" means a business entity under the control of an institution.
- (35) (a) "Transaction account" means a deposit, account, or other contractual arrangement in which a depositor, account holder, or other customer is permitted, directly or indirectly, to make withdrawals by:
- (i) check or other negotiable or transferable instrument;
 - (ii) payment order of withdrawal;
 - (iii) telephone transfer;
 - (iv) other electronic means; or
 - (v) any other means or device for the purpose of making payments or transfers to third persons.
- (b) "Transaction account" includes:
- (i) demand deposits;
 - (ii) NOW accounts;
 - (iii) savings deposits subject to automatic transfers; and
 - (iv) share draft accounts.
- (36) "Trust company" means a person authorized to conduct a trust business, as provided in Chapter 5, Trust Business.
- (37) "Utah depository institution" means a depository institution whose home state is Utah.
- (38) "Utah depository institution holding company" means a depository institution holding company whose home state is Utah.

Amended by Chapter 189, 2014 General Session

7-1-104. Exemptions from application of title.

- (1) This title does not apply to:
- (a) investment companies registered under the Investment Company Act of 1940, 15 U.S.C. Sec. 80a-1 et seq.;
 - (b) securities brokers and dealers registered pursuant to:
 - (i) Title 61, Chapter 1, Utah Uniform Securities Act; or
 - (ii) the federal Securities Exchange Act of 1934, 15 U.S.C. Sec. 78a et seq.;
 - (c) depository or other institutions performing transaction account services, including third party transactions, in connection with:
 - (i) the purchase and redemption of investment company shares; or
 - (ii) access to a margin or cash securities account maintained by a person

identified in Subsection (1)(b); or

(d) insurance companies selling interests in an investment company or "separate account" and subject to regulation by the Utah Insurance Department.

(2) (a) An institution, organization, or person is not exempt from this title if, within this state, it holds itself out to the public as receiving and holding deposits from residents of this state, whether evidenced by a certificate, promissory note, or otherwise.

(b) An investment company is not exempt from this title unless the investment company is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. Sec. 80a-1 et seq., and is advised by an investment adviser:

(i) which is registered with the United States Securities and Exchange Commission under the Investment Advisers Act of 1940, 15 U.S.C. Sec. 80b-1 et seq.; and

(ii) which advises investment companies and other accounts with a combined value of at least \$50,000,000.

Amended by Chapter 356, 2009 General Session

7-1-105. Procedures -- Adjudicative proceedings.

The commissioner and the department shall, except to the extent exempted, comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

Amended by Chapter 382, 2008 General Session

7-1-201. Creation of department -- Organization.

(1) There is created the Department of Financial Institutions that is responsible for the execution of the laws of this state relating to all financial institutions and other persons subject to this title, and relating to the businesses they conduct.

(2) The department organization includes:

(a) the commissioner of financial institutions, who shall be the chief executive officer of the department;

(b) the Board of Financial Institutions;

(c) the chief examiner;

(d) the deputy commissioner;

(e) the supervisor of banks;

(f) the supervisor of industrial banks;

(g) the supervisor of credit unions;

(h) the supervisor of money services businesses; and

(i) other supervisors, examiners, and personnel as may be required to carry out the duties, powers, and responsibilities of the department.

Amended by Chapter 73, 2013 General Session

7-1-202. Commissioner of financial institutions as executive officer --

Appointment -- Term -- Salary -- Qualifications.

The chief executive officer of the Department of Financial Institutions shall be the commissioner of financial institutions who shall be appointed by the governor with the consent of the Senate. He shall hold office for a term of four years following his appointment and confirmation and until his successor is appointed and qualified, but he shall be subject to removal at the pleasure of the governor. The governor shall establish the commissioner's salary within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation. The commissioner of financial institutions shall be a citizen of the United States and shall have sufficient experience with depository institutions or as an employee of a state or federal agency having supervision over financial institutions to demonstrate his qualifications and fitness to perform the duties of his office.

Amended by Chapter 176, 2002 General Session

7-1-203. Board of Financial Institutions.

(1) There is created a Board of Financial Institutions consisting of the commissioner and the following five members, who shall be qualified by training and experience in their respective fields and shall be appointed by the governor with the consent of the Senate:

- (a) one representative from the commercial banking business;
- (b) one representative from the consumer lending, money services business, or escrow agency business;
- (c) one representative from the industrial bank business;
- (d) one representative from the credit union business; and
- (e) one representative of the general public who, as a result of education, training, experience, or interest, is well qualified to consider economic and financial issues and data as they may affect the public interest in the soundness of the financial systems of this state.

(2) The commissioner shall act as chair.

(3) (a) A member of the board shall be a resident of this state.

(b) No more than three members of the board may be from the same political party.

(c) No more than two members of the board may be connected with the same financial institution or its holding company.

(d) A member may not participate in any matter involving an institution with which the member has a conflict of interest.

(4) (a) Except as required by Subsection (4)(b), the terms of office shall be four years each expiring on July 1.

(b) The governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) A member serves until the member's successor is appointed and qualified.

(d) When a vacancy occurs in the membership for any reason, the governor shall appoint a replacement for the unexpired term.

(5) (a) The board shall meet at least quarterly on a date the board sets.

- (b) The commissioner or any two members of the board may call additional meetings.
- (c) Four members constitute a quorum for the transaction of business.
- (d) Actions of the board require a vote of a majority of those present when a quorum is present.
- (e) A meeting of the board and records of the board's proceedings are subject to Title 52, Chapter 4, Open and Public Meetings Act, except for discussion of confidential information pertaining to a particular financial institution.
- (6) (a) A member of the board shall, by sworn or written statement filed with the commissioner, disclose any position of employment or ownership interest that the member has with respect to any institution subject to the jurisdiction of the department.
 - (b) The member shall:
 - (i) file the statement required by this Subsection (6) when first appointed to the board; and
 - (ii) subsequently file amendments to the statement if there is any material change in the matters covered by the statement.
- (7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (8) The board shall advise the commissioner with respect to:
 - (a) the exercise of the commissioner's duties, powers, and responsibilities under this title; and
 - (b) the organization and performance of the department and its employees.
- (9) The board shall recommend annually to the governor and the Legislature a budget for the requirements of the department in carrying out its duties, functions, and responsibilities under this title.

Amended by Chapter 73, 2013 General Session

7-1-204. Chief examiner -- Powers and duties.

- (1) The commissioner shall designate an examiner as chief examiner, who shall be sufficiently qualified by training and experience in financial institutions or as an employee of a state or federal agency having supervision of financial institutions to perform the duties of the office.
- (2) The chief examiner shall serve at the pleasure of the commissioner. If the office of commissioner is vacant, or in the absence, recusal, or disability of the commissioner, the chief examiner shall exercise all of the powers of the commissioner, except those powers the commissioner otherwise delegates or reserves during a period of absence or recusal. The chief examiner shall assist, advise, and perform administrative duties as directed by the commissioner and may also act as a supervisor.

Amended by Chapter 200, 1994 General Session

7-1-205. Supervisor of banks -- Responsibilities.

(1) The commissioner shall designate an examiner as supervisor of banks, who shall be sufficiently qualified by training and experience in the banking business or as an employee of a state or federal bank supervisory agency to perform the duties of the office.

(2) The supervisor of banks is responsible, subject to the direction and control of the commissioner, for the general supervision and examination of all banks and bank-related institutions subject to the jurisdiction of the department. The supervisor shall assist and advise the commissioner in the execution of the laws of this state relating to these institutions and shall perform other duties prescribed in this title or assigned by the commissioner.

Amended by Chapter 200, 1994 General Session

7-1-207. Supervisor of industrial banks -- Responsibilities.

(1) The commissioner shall designate an examiner as supervisor of industrial banks who shall be sufficiently qualified by training and experience in the business of industrial banks or other financial institutions or as an employee of a state or federal agency supervising financial institutions to perform the duties of the office.

(2) (a) The supervisor of industrial banks is responsible, subject to the direction and control of the commissioner, for the general supervision and examination of all industrial banks subject to the jurisdiction of the department and other institutions as assigned.

(b) The supervisor shall:

(i) assist and advise the commissioner in the execution of the laws of this state relating to these institutions; and

(ii) perform other duties prescribed in this title or assigned by the commissioner.

Amended by Chapter 92, 2004 General Session

7-1-208. Supervisor of credit unions -- Responsibilities.

(1) The commissioner shall designate an examiner as supervisor of credit unions who shall be sufficiently qualified by training and experience in the business of credit unions or as an employee of a state or federal agency supervising credit unions to perform the duties of the office.

(2) The supervisor of credit unions is responsible, subject to the direction and control of the commissioner, for the general supervision and examination of all credit unions subject to the jurisdiction of the department and other institutions assigned by the commissioner. The supervisor shall assist and advise the commissioner in the execution of the laws of this state relating to these institutions, and shall perform other duties prescribed in this title or assigned by the commissioner.

Amended by Chapter 200, 1994 General Session

7-1-208.1. Supervisor of trusts -- Qualifications -- Responsibilities.

The commissioner may designate an examiner as supervisor of trusts who shall

be a citizen of the United States and shall have sufficient training and experience with regard to trusts to demonstrate his qualifications and fitness to perform the duties of his office. The supervisor of trusts is responsible, subject to the direction and control of the commissioner, for the general supervision and examination of all trusts subject to the jurisdiction of the department under this title. He shall assist and advise the commissioner in the execution of the laws of this state relating to trusts and shall perform other duties prescribed in this title or assigned to him by the commissioner.

Enacted by Chapter 267, 1989 General Session

7-1-208.2. Deputy commissioner.

The commissioner may appoint a deputy commissioner who shall be a citizen of the United States and a member of the Utah State Bar, to serve at the pleasure of the commissioner. The deputy commissioner shall serve as staff attorney for the department and perform all other duties assigned to him by the commissioner.

Enacted by Chapter 267, 1989 General Session

7-1-208.3. Supervisor of money services businesses.

(1) The commissioner shall designate an examiner as supervisor of money services businesses who shall be sufficiently qualified by training and experience in the business of money services businesses or other financial institutions or as an employee of a state or federal agency supervising financial institutions to perform the duties of the office.

(2) (a) The supervisor of money services businesses is responsible, subject to the direction and control of the commissioner, for the general supervision and examination of money services businesses subject to the jurisdiction of the department and other institutions as assigned.

(b) The supervisor shall:

- (i) assist and advise the commissioner in the execution of the laws of this state relating to money services businesses; and
- (ii) perform other duties prescribed in this title or assigned by the commissioner.

Enacted by Chapter 73, 2013 General Session

7-1-209. Additional supervisors, examiners, and other personnel -- Compensation -- Travel expenses.

(1) In addition to the supervisors under Sections 7-1-205 through 7-1-208.1, the commissioner may appoint additional supervisors as necessary. The commissioner may assign to any supervisor responsibility, subject to the direction and control of the commissioner, for the general supervision and examination of any class of financial institutions or other persons not specifically assigned to another supervisor.

(2) The commissioner may employ examiners required for the proper conduct of the department. These examiners may not be interested, directly or indirectly, in any institution under the jurisdiction and supervision of the department. They shall perform duties prescribed by this title or assigned to them by the commissioner.

(3) The commissioner may delegate to the chief examiner or any supervisor the duty of conducting hearings in carrying out the duties, powers, and functions of the department or he may employ, on a regular or part-time basis, similarly qualified persons to act as hearing officers for those purposes.

(4) The commissioner may appoint or employ, on a permanent or consulting basis, other persons qualified by education, training, and experience for the needs of the department as the commissioner considers necessary to carry out the duties, powers, and responsibilities of the department.

(5) The commissioner may employ clerical help to properly carry on the work of the department.

(6) The salaries of the employees of the department shall be fixed in accordance with salary and merit standards adopted by the Division of Finance and are payable in the same manner as the salaries of other state employees. All actual and necessary traveling expenses of the commissioner, supervisors, examiners, and other employees of the department incurred in the discharge of their duties shall be fully itemized upon proper vouchers and certified by the commissioner to the director of the Division of Finance.

Amended by Chapter 200, 1994 General Session

7-1-210. Records of department required.

The commissioner shall keep as records of the department proper books showing all acts and matters and things done by the department.

Enacted by Chapter 16, 1981 General Session

7-1-211. Reports of commissioner to governor and Legislature.

The commissioner shall submit on or before October 1 of each year a report to the governor and to the Legislature containing information from the last report of condition furnished by each institution under the supervision of the department and any other proceeding had or done by the department showing generally the condition of the businesses under the supervision of the department and such other matters in connection with the businesses as may be of interest to the public; and a detailed statement, verified by oath, of all fees and other money received by the department during the same period.

Enacted by Chapter 16, 1981 General Session

7-1-301. Powers and duties of commissioner -- Rulemaking.

Without limiting the other powers, duties, and responsibilities specified in this title, the commissioner has the functions, powers, duties, and responsibilities with respect to an institution, person, or business subject to the jurisdiction of the department contained in this title, including the functions, powers, duties, and responsibilities described in Subsections (1) through (15).

(1) The commissioner may govern the administration and operation of the department.

(2) The commissioner may supervise the conduct, operation, management, examination, and statements and reports of examinations of financial institutions and other persons subject to the jurisdiction of the department.

(3) (a) The commissioner may authorize a state chartered depository institution to engage in any activity it could engage in, and to grant to that institution all additional rights, powers, privileges, benefits, or immunities it would possess, if it were chartered under the laws of the United States.

(b) The commissioner may authorize a depository institution chartered by this state to engage in any activity that a Utah branch of an out-of-state depository institution of the same class can engage in, and to grant to the Utah institution all additional rights, powers, privileges, benefits, or immunities it needs to engage in the activity.

(c) In granting authority under this Subsection (3), the commissioner shall consider:

(i) the need for competitive equality between institutions chartered by this state and institutions operating in this state that are chartered by another state or by the federal government; and

(ii) the adverse effect on shareholders, members, depositors, and other customers of financial institutions chartered by this state if equal power and protection of those institutions, compared with federally chartered or out-of-state institutions of the same class, are not promptly available.

(4) The commissioner may safeguard the interest of shareholders, members, depositors, and other customers of institutions and other persons subject to the jurisdiction of the department.

(5) (a) The commissioner may establish criteria consistent with this title to be applied in granting applications for approval of:

(i) a new institution;

(ii) a new branch;

(iii) the relocation of an office or branch;

(iv) a merger;

(v) a consolidation;

(vi) a change in control of an institution or other person subject to the jurisdiction of the department; and

(vii) other applications specified in this title.

(b) The criteria established under Subsection (5)(a) may not be applied to make it more difficult for a state chartered institution to obtain approval of an application than for a federally chartered institution in the same class to obtain approval from the appropriate federal regulatory agency or administrator.

(6) (a) The commissioner may protect the privacy of the records of any institution subject to the jurisdiction of the department pertaining to a particular depositor or other customer of the institution. Rules adopted under this Subsection (6) shall be consistent with federal laws and regulations applicable to the institution.

(b) An institution that consents to produce records or that is required to produce records in compliance with a subpoena or other order of a court of competent jurisdiction or in compliance with an order obtained pursuant to Sections 7-1-1001 through 7-1-1007 shall be reimbursed for the cost of retrieval and reproduction of the

records by the party seeking the information. The commissioner may by rule establish the rates and conditions under which reimbursement is made.

(7) (a) The commissioner may classify the records kept by institutions subject to the jurisdiction of the department and to prescribe the period for which each class of records is retained.

(b) Rules adopted under this Subsection (7) for any class of financial institution shall be consistent with federal laws and regulations applicable to the class.

(c) Rules made under this Subsection (7) shall provide that:

(i) An institution may dispose of any record after retaining it for the period prescribed by the commissioner for retention of records of its class. If an institution disposes of a record after the prescribed period, the institution has no duty to produce it in any action or proceeding and is not liable to any person by reason of that disposition.

(ii) An institution may keep records in its custody in the form of microfilm or equivalent reproduction. A reproduction has the same force and effect as the original and shall be admissible into evidence as if it were the original.

(d) In adopting rules under this Subsection (7), the commissioner shall take into consideration:

(i) actions at law and administrative proceedings in which the production of the records might be necessary or desirable;

(ii) state and federal statutes of limitation applicable to the actions or proceedings;

(iii) the availability from other sources of information contained in these records; and

(iv) other matters the commissioner considers pertinent in formulating rules that require institutions to retain their records for as short a period as commensurate with the interest in having the records available of:

(A) customers, members, depositors, and shareholders of the institutions; and

(B) the people of this state.

(8) (a) The commissioner may establish reasonable classes of depository and other financial institutions including separate classes for:

(i) banks and related institutions;

(ii) credit unions; and

(iii) industrial banks.

(b) If the restrictions or requirements the commissioner imposes are not more stringent than those applicable under federal law or regulation to federally chartered institutions of the same class, the commissioner may establish the following for each class in a manner consistent with this title:

(i) eligible classes and types of investments for the deposits and other funds of those financial institutions;

(ii) minimum standards, in amounts sufficient to protect depositors and other creditors, for the amount and types of capital required to engage in the business conducted by each class or to obtain a license or to establish a branch or additional office of an institution of each class;

(iii) eligible obligations, reserves, and other accounts to be included in the computation of capital;

(iv) minimum liquidity requirements for financial institutions within each class in

amounts sufficient to meet the demands of depositors and other creditors for liquid funds;

(v) limitations on the amount and type of borrowings by each class of financial institution in relation to the amount of its capital and the character and condition of its assets and its deposits and other liabilities;

(vi) limitations on the amount and nature of loans and extensions of credit to a person or related persons by each class of financial institution in relation to the amount of its capital; and

(vii) limitations on the amount and nature of loans and extensions of credit by a financial institution or other person within each class to an executive officer, director, or principal shareholder of:

(A) the institution or other person;

(B) a company of which the institution or other person is a subsidiary;

(C) a subsidiary of the institution or other person;

(D) an affiliate of the institution; and

(E) a company controlled by an executive officer, director, or principal shareholder of the institution.

(9) The commissioner may define unfair trade practices of financial institutions and other persons subject to the jurisdiction of the department and to prohibit or restrict these practices.

(10) The commissioner may establish reasonable standards to promote the fair and truthful advertising of:

(a) services offered by a financial institution;

(b) the charges for the services advertised under Subsection (10)(a);

(c) the interest or other compensation to be paid on deposits or any debt instrument offered for sale by the institution;

(d) the nature and extent of any:

(i) insurance on deposits;

(ii) savings accounts;

(iii) share accounts;

(iv) certificates of deposit;

(v) time deposit accounts;

(vi) NOW accounts;

(vii) share draft accounts;

(viii) transaction accounts; or

(ix) any evidence of indebtedness issued, offered for sale, offered to sell or sold by a financial institution or other person subject to the jurisdiction of the department; and

(e) the safety or financial soundness of a financial institution or other person subject to the jurisdiction of the department.

(11) The commissioner may define what constitutes an impairment of capital for each class of financial institution or other person subject to the jurisdiction of the department.

(12) The commissioner may designate days on which depository institutions are closed in accordance with Section 7-1-808.

(13) The commissioner may regulate the issuance, advertising, offer for sale,

and sale of a security to the extent authorized by Section 7-1-503.

(14) The commissioner may require the officers of an institution or other person subject to the commissioner's jurisdiction to open and keep a standard set of books, computer records, or both for the purpose of keeping accurate and convenient records of the transactions and accounts of the institution in a manner to enable the commissioner, supervisors, and department examiners to readily ascertain the institution's true condition. These requirements shall be consistent with generally accepted accounting principles for financial institutions.

(15) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may issue rules consistent with the purposes and provisions of this title, and may revise, amend, or repeal the rules adopted.

Amended by Chapter 73, 2013 General Session

7-1-302. Review of supervisor's action by commissioner.

The commissioner shall review, upon written request of the institution or other person affected, any act or order of a supervisor and may suspend, modify, or revoke any such act or order as he may find to be arbitrary, capricious, contrary to law or the rules and regulations of the department, or not in the best interest of the public or of the state.

Enacted by Chapter 16, 1981 General Session

7-1-303. Joint operations and information exchange by institutions.

The commissioner may authorize institutions subject to the jurisdiction of the department to engage in such joint and cooperative actions as the commissioner finds will be in the public interest, including:

- (1) mutual exchange of financial information as to depositors, borrowers, and other customers;
- (2) joint use of facilities;
- (3) joint operation of clearing houses and other facilities for payment of checks, drafts, or other instruments drawn on or issued by various classes of depository institutions;
- (4) joint participation in lending programs to promote the public welfare;
- (5) joint risk management services; and
- (6) joint ownership, operation, or furnishing of electronic funds transfer services.

Amended by Chapter 378, 2010 General Session

7-1-304. Civil actions against unauthorized operations.

The commissioner may bring any appropriate civil action to prevent or restrain any person from engaging in this state in any business subject to the jurisdiction of the department without first having obtained the authority to do so as provided in this title or from violating any other provisions of this title or any rule, regulation, or order of the commissioner.

Enacted by Chapter 16, 1981 General Session

7-1-305. Final decisions on applications for new institutions, branches, relocation, merger, consolidation, acquisition and changes in control of financial institutions.

The commissioner shall make final decisions consistent with the purposes and provisions of this title on behalf of the department upon all applications to the department for approval of new institutions, branches, relocation, mergers or consolidation, acquisitions and changes in control of institutions subject to the jurisdiction of the department.

Enacted by Chapter 16, 1981 General Session

7-1-307. Cease and desist orders -- Procedure for issuance.

(1) If the commissioner has determined that any institution or other person under the jurisdiction of the department, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution or other person, is engaging or has engaged or that the commissioner has reasonable cause to believe is about to engage in an unsafe or unsound practice in conducting the business of such institution or other person, or is violating or has violated or the commissioner has reasonable cause to believe is about to violate any applicable provision of this title, or any rule, regulation, order, or any condition imposed in writing by the commissioner in the granting of any application or other request by the institution or other person, or any written agreement entered into with the commissioner, the commissioner may, after notice and opportunity for hearing, issue a cease and desist order against such institution or other person.

(2) If the commissioner has determined that any institution or other person under the jurisdiction of the department or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution or other person is engaging in any unsafe or unsound practice or is violating any relevant provision of this title, or any rule, regulation, order, or any condition imposed in writing by the commissioner which the commissioner determines threatens the safety and soundness of the institution or other person, the commissioner may issue a temporary cease and desist order. A temporary cease and desist order is effective immediately upon issuance for 30 days and may be extended by the commissioner in writing for two consecutive 15-day periods. A hearing on the temporary cease and desist order shall be held by the commissioner within 10 days of its issuance, at which time the temporary cease and desist order may be set aside, modified, terminated, or made final.

Enacted by Chapter 8, 1983 General Session

7-1-308. Suspension or removal of director or officer -- Grounds -- Procedure for issuance of order.

(1) (a) If the commissioner has determined that any officer or director of an institution or other person under the jurisdiction of the department has:

(i) violated any law, rule, regulation, or a cease and desist order which has

become final;

(ii) engaged or participated in any unsafe or unsound practice in the conduct of the affairs of the institution or other person;

(iii) committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as an officer or director;

(iv) been charged in any information, indictment, or complaint authorized by a county attorney, a district attorney, or the attorney general of the state relative to a violation of this title; or

(v) been charged with the commission of or participation in a crime involving dishonesty or breach of trust; and

(b) if the commissioner determines that:

(i) the institution or other person under the jurisdiction of the department has suffered or will suffer substantial financial loss or other damage due to such actions and that such action may impair the safety and soundness of the institution or other person or prejudice in any manner the interests of the depositors, members, creditors, or shareholders; or

(ii) the director or officer has received financial gain by reason of any breach of fiduciary duty; the commissioner may, after notice and opportunity for hearing, serve upon such director or officer a written notice of suspension or removal of the individual from office or prohibition from further participation in the conduct of the affairs of the institution or other person.

(2) If the commissioner deems it necessary for the protection of an institution or other person under the jurisdiction of the department or the interests of its depositors, members, creditors, or shareholders, he may, by written notice served upon the officer or director, suspend that officer or director from office or prohibit him from further participation in any manner in the conduct of the affairs of the institution or other person. The suspension or prohibition is effective upon service of the notice and, unless stayed by a court, shall remain in effect until the commissioner dismisses the charges specified in the notice, or, if an order of removal or prohibition is issued against the officer or director, until the effective date of that order.

Amended by Chapter 38, 1993 General Session

7-1-309. Hearings by commissioner -- Discretion of commissioner -- Procedure -- Judicial review.

The commissioner may conduct or cause to be conducted hearings relating to matters within his supervisory jurisdiction and shall establish rules for discovery and other procedures applicable to the hearings consistent with the provisions of the Utah Rules of Civil Procedure. The decision whether or not to hold a formal hearing on any matter coming before the commissioner under this title shall be solely within the discretion of the commissioner. His failure or refusal to hold a formal hearing is not a ground for reversal of any decision or order of the commissioner unless the reviewing court finds that such failure or refusal has deprived an interested party of due process of law, or that a formal hearing is required by the provisions of this title.

Amended by Chapter 378, 2010 General Session

7-1-310. Subpoena power of commissioner.

The commissioner may issue subpoenas to compel the attendance of witnesses and the production of books, records, and other papers and documents and may examine or cause to be examined under oath any officer, director, or employee of any institution subject to the jurisdiction of the department or any other person whose testimony he finds relevant to any matter before him or whose testimony is necessary or appropriate in carrying out his duties and responsibilities.

Enacted by Chapter 16, 1981 General Session

7-1-311. Moratoriums on applications for new depository institutions or branches.

The commissioner may establish, upon finding that applicable financial and economic conditions require such action, a moratorium on accepting or acting upon applications to conduct a business of depository institutions subject to the jurisdiction of the department or to establish new branches or offices of institutions subject to the jurisdiction of the department. The moratorium may apply to the entire state or to such community or communities or other market area or areas as the commissioner finds appropriate. No such period shall extend for a period longer than one year, unless the commissioner finds that the public interest requires renewal of the period for an additional period not to exceed one year.

Enacted by Chapter 16, 1981 General Session

7-1-312. Reports required of large stockholders of financial institutions as to loans secured by stock.

The commissioner may require any person owning or acquiring 25% or more of the outstanding capital stock of any depository institution subject to his jurisdiction, or 25% or more of the stock of any corporation having control of the institution, to report to him any borrowing by that person which is secured by that stock and to report to him the terms of the borrowing. This section applies only if the purpose for the borrowing was to acquire control of the institution or any other depository institution.

Enacted by Chapter 16, 1981 General Session

7-1-313. Requiring remedial action by institution in or about to be in unsound condition -- Assistance by insurers.

(1) The commissioner may require any financial institution subject to the jurisdiction of the department that he finds to be or about to be in an unsafe or unsound condition to take corrective or remedial action as he considers appropriate to protect the interests of depositors, members, other creditors, and shareholders of the institution, and the general public.

(2) An insurer of the accounts of a financial institution may make loans to, purchase the assets of, establish accounts in, or provide other assistance to a financial institution in order to correct or remedy an unsafe or unsound condition or to protect the interests of depositors, members, other creditors, and shareholders of the institution.

This assistance is subject to approval by the commissioner.

Amended by Chapter 267, 1989 General Session

7-1-314. Examination of institutions by commissioner or supervisor.

(1) The commissioner or the responsible supervisor shall visit and examine or cause to be visited and examined every depository institution and such other institutions subject to the jurisdiction of the department as the commissioner considers necessary or advisable.

(2) At every examination of a depository institution careful inquiry shall be made as to: (a) the condition and resources of the institution examined; (b) the mode of conducting and managing of its affairs; (c) the actions of its directors and officers; (d) the investment and disposition of its funds; (e) the security offered to depositors and other customers; (f) whether or not it is violating any provision of law relating to the institution or the business of the institution examined; (g) whether or not it is complying with its articles of incorporation and bylaws; and (h) such other matters as the commissioner may prescribe.

(3) The commissioner may, in his discretion, accept examinations of any institution which are made by federal examiners or examiners from other states having jurisdiction over that institution in lieu of any examination required under the laws of this state.

(4) The nature and extent of examination of institutions or other business entities not classified as depository institutions but otherwise subject to the jurisdiction of the department as provided in this title shall be such as the commissioner may determine to be necessary or appropriate in determining whether or not the business is being conducted in accordance with law and the regulations of the department.

Enacted by Chapter 16, 1981 General Session

7-1-315. Examination by board of directors required -- Report.

The commissioner may at any time require the board of directors of any or all institutions under his jurisdiction to fully examine or have fully examined the books, papers, and affairs of the institution of which they are directors and particularly the loans, discounts, and overdrafts of such institutions to ascertain the value and security thereof and the collateral security, if any, given in connection therewith and to inquire into such other matters as the commissioner may consider necessary and to have a report placed on file with the records of the institution, which report shall be subject to examination by the commissioner.

Enacted by Chapter 16, 1981 General Session

7-1-316. Forms for reports required from institutions.

The commissioner shall prescribe the forms for all reports required by law or regulation from financial institutions subject to the jurisdiction of the department and may change the forms at his discretion. The department shall furnish without charge upon the request of any such institution any blank form necessary or required by law.

Enacted by Chapter 16, 1981 General Session

7-1-317. Reports of condition called for by commissioner.

The commissioner may call upon any institution under the jurisdiction of the department for a report of its condition at the close of business on any day specified in the call within the preceding three months. The reports required shall be transmitted by the institution to the commissioner within 30 days after the date of the call. Reports prepared by an independent certified public accountant or reports accepted by supervisory agencies of the United States or other states shall be acceptable.

Enacted by Chapter 16, 1981 General Session

7-1-318. Reports of condition -- Form -- Falsification or failure to file.

(1) Each institution under the jurisdiction of the department, including each out-of-state depository institution operating a branch in this state, shall provide a report of its condition to the department at least twice a year, as required by the commissioner. The commissioner may require an institution to provide more frequent reports as necessary.

(2) The report shall be made according to the form prescribed by the commissioner and shall be verified by the oath or affirmation of the president or a vice president and attested by at least two directors.

(3) It is a third degree felony for any officer, director, or employee of a financial institution to do any of the following:

(a) knowingly subscribe or cause to be made any false statement or report to the commissioner or department;

(b) knowingly subscribe or cause to be made any false entry in the books or accounts of the institution; or

(c) knowingly subscribe or exhibit false papers with intent to deceive any person authorized to examine the institution.

(4) Each institution that fails or neglects to make a report within 30 days after receiving a call for any report required by this title, by an order of the commissioner, or by any rule of the department is subject to a penalty of \$50 a day for each day the report is past due. The commissioner may reduce or waive the penalty for good cause shown.

(5) It is criminal perjury for any officer or employee of a financial institution under the jurisdiction of the department to willfully swear falsely in making an oath or affirmation concerning a report of the institution's condition.

(6) For information purposes, and without being subject to penalties under state law, a federally chartered depository institution operating a main office or branch in this state shall provide to the department a copy of its regular report of condition filed with its chartering agency.

Amended by Chapter 49, 1995 General Session

7-1-319. Notice to county attorney or district attorney of criminal violations

**-- Attorney general to conduct actions commenced by commissioner --
Assistance of county attorney or district attorney.**

The commissioner shall inform the county attorney or district attorney in the county in which the principal office of an institution is located of any violation of any provision of law which constitutes a misdemeanor or felony by an officer, director, or employee of any institution under his jurisdiction which shall come to his notice, and upon receipt of such information the county attorney or district attorney shall institute proceedings to enforce the provisions of the law. The attorney general shall conduct all actions, suits, and proceedings begun by the commissioner under authority of law and may call to his assistance the county attorney or district attorney of the county in which the action, suit, or proceeding is conducted, and it shall be the duty of the county attorney or district attorney to render such assistance as the attorney general may require.

Amended by Chapter 38, 1993 General Session

**7-1-320. Actions to enjoin violations -- Bond not required -- Recovery --
Attorney's fees.**

(1) Whenever it appears to the commissioner that any person has engaged in or is about to engage in any act or practice constituting a violation of this title or any rule, regulation, or order of the commissioner or the department, he may bring an action in an appropriate court of general jurisdiction to enjoin the acts or practices and to enforce compliance with this title or any rule or order issued under this title. Upon a proper showing, a permanent or temporary injunction, restraining order, or extraordinary writ shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond.

(2) If the court finds that the defendant in an action brought by the commissioner pursuant to this section has violated or is about to violate any provision of this title or any rule or order of the commissioner, the court may award to the department an amount not exceeding \$10,000 per day for each day the defendant was in violation. The court may also award the department reasonable attorney's fees.

Amended by Chapter 133, 1991 General Session

7-1-321. Powers and duties of commissioner to carry out purposes of title.

The commissioner shall have such other powers, duties, and responsibilities as shall be necessary or appropriate to carry out the provisions and purposes of this title and to prevent evasion thereof, to promote and insure the safety, soundness, and stability of institutions subject to the jurisdiction of the department or to protect the interest of depositors and other customers of the institutions.

Enacted by Chapter 16, 1981 General Session

**7-1-322. Orders of commissioner -- Writing -- Service -- Contents --
Enforcement.**

Any order issued by the commissioner under authority of this title shall be in

writing, delivered to the institution or institutions affected and shall state the findings of the commissioner and the action required. The order shall specify the effective date thereof, which may be immediate or may be at a later date, and such order shall remain in effect until withdrawn by the commissioner or until terminated by a court order. The order of the commissioner, upon application made on or after the effective date of the order by the commissioner to a court of general jurisdiction in the county in which the principal office of the institution is located, may be enforced ex parte and without notice by an order to comply entered by the court.

Enacted by Chapter 16, 1981 General Session

7-1-323. Regulation of interstate operations -- Coordination of efforts.

(1) The commissioner may:

(a) examine, supervise, and regulate a branch operated in this state by a depository institution chartered by another state and take any action or issue any order with regard to that branch;

(b) examine, supervise, and regulate a branch operated in another state by a depository institution chartered by this state and take any action or issue any order with regard to that branch; and

(c) coordinate these activities with any other state or federal agency that shares jurisdiction over the institution.

(2) The commissioner may coordinate the examination, supervision, and regulation of any depository institution chartered by this state with the examination, supervision, and regulation of an affiliated depository institution operating in another state.

(3) The commissioner may take any reasonable and lawful action in furtherance of coordinating the regulation of interstate operations, including:

(a) negotiating and entering into cooperative agreements with an agency of another state or of the federal government;

(b) sharing information and reports in accordance with Section 7-1-802 with an agency that shares jurisdiction over the institution;

(c) accepting as sufficient, if appropriate, examination reports and other information compiled or generated by or for an agency that shares jurisdiction over the institution;

(d) contracting with an agency that shares jurisdiction over the institution to engage the services of its examiners at a reasonable rate of compensation;

(e) offering the services of the department's examiners at a reasonable rate of compensation to an agency that shares jurisdiction over the institution;

(f) collecting fees on behalf of, or receiving payment of fees through, an agency that shares jurisdiction over the institution; and

(g) cooperating in any other way with other supervisory agencies and professional associations to promote the efficient, safe, and sound operation and regulation of interstate depository institution activities, including the formulation of interstate examination policies and procedures and the drafting of model laws, rules, and agreements.

(4) A contract between the department and an agency that shares jurisdiction

over a depository institution to provide examiners to aid in interstate examination and regulation is considered a sole source contract under Section 63G-6a-802.

Amended by Chapter 347, 2012 General Session

7-1-324. Debt cancellation agreements and debt suspension agreements.

- (1) As used in this section:
 - (a) "Class of depository institution" means a class consisting of:
 - (i) banks;
 - (ii) credit unions;
 - (iii) industrial banks; or
 - (iv) wholly owned subsidiaries of a depository institution listed in this Subsection
 - (1)(a).
 - (b) "Debt cancellation agreement" is as defined in Section 31A-21-109.
 - (c) "Debt suspension agreement" is as defined in Section 31A-21-109.
 - (2) Subject to the other provisions of this section, the commissioner may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
 - (a) authorize any member of a class of depository institution that is subject to the jurisdiction of the department to issue:
 - (i) a debt cancellation agreement; or
 - (ii) a debt suspension agreement; and
 - (b) regulate the issuance of a debt cancellation agreement or a debt suspension agreement issued in this state by a member of a class of depository institution.
 - (3) (a) Any rule adopted by the commissioner under this section as applied to a class of depository institution shall be substantially similar to any federal regulation applying to the same class of depository institution.
 - (b) Any rule adopted by the commissioner applicable to a class of depository institution described in this Subsection (3)(b) shall be substantially similar to any federal regulation applicable to a bank if no federal regulation authorizes or regulates the issuance of a debt cancellation agreement or debt suspension agreement for that class of depository institution.
 - (4) (a) An out-of-state depository institution may issue a debt cancellation agreement or debt suspension agreement in this state if:
 - (i) the home state of the out-of-state depository institution authorizes and regulates the issuance of a debt cancellation agreement or debt suspension agreement by the out-of-state depository institution; and
 - (ii) subject to Subsection (4)(b), the out-of-state depository institution complies with regulations from the out-of-state depository institution's home state that regulate the issuance of a debt cancellation agreement or a debt suspension agreement.
 - (b) Notwithstanding Subsection (4)(a), an out-of-state depository institution described in Subsection (4)(a) shall comply with rules adopted by the commissioner under this section that regulate the issuance of a debt cancellation agreement or a debt suspension agreement in this state by the class of depository institution to which the out-of-state depository institution belongs if the regulations of the out-of-state depository institution's home state do not provide at least the same level of protection with respect to a debt cancellation agreement or debt suspension agreement as the

rules adopted by the commissioner under this section with respect to the same class of depository institution:

- (i) for the safety and soundness of the depository institution; and
- (ii) for consumer protections for the borrowers of the depository institution.

Amended by Chapter 73, 2013 General Session

7-1-325. Compliance with applicable federal law.

(1) As used in this section, "federal law" means:

- (a) a statute passed by the Congress of the United States; or
- (b) a final regulation:
 - (i) adopted by an administrative agency of the United States government; and
 - (ii) published in the code of federal regulations or the federal register.

(2) (a) An institution subject to the jurisdiction of the department violates this title if the institution violates a federal law:

- (i) that is applicable to the institution; and
- (ii) pursuant to the terms of the federal law in effect on the day the institution violates the federal law.

(b) The department shall by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this title, designate which one or more federal laws are applicable to an institution subject to the jurisdiction of the department.

(3) Except for criminal penalties, the department may enforce a violation described in Subsection (2) by taking any action:

- (a) permitted by:
 - (i) this part;
 - (ii) Chapter 2, Possession of Depository Institution by Commissioner;
 - (iii) Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies;
 - (iv) in the case of a check casher or deferred deposit lender, Chapter 23, Check Cashing and Deferred Deposit Lending Registration Act; or
 - (v) in the case of a title lender, Chapter 24, Title Lending Registration Act; and
- (b) including bringing an action permitted under this title in state court.

Amended by Chapter 96, 2008 General Session

Amended by Chapter 382, 2008 General Session

7-1-401. Fees payable to commissioner.

(1) Except for an out-of-state depository institution with a branch in Utah, a depository institution under the jurisdiction of the department shall pay an annual fee:

(a) computed by averaging the total assets of the depository institution shown on each quarterly report of condition for the depository institution for the calendar year immediately proceeding the date on which the annual fee is due under Section 7-1-402; and

- (b) at the following rates:
 - (i) on the first \$5,000,000 of these assets, the greater of:

- (A) 65 cents per \$1,000; or
- (B) \$500;
- (ii) on the next \$10,000,000 of these assets, 35 cents per \$1,000;
- (iii) on the next \$35,000,000 of these assets, 15 cents per \$1,000;
- (iv) on the next \$50,000,000 of these assets, 12 cents per \$1,000;
- (v) on the next \$200,000,000 of these assets, 10 cents per \$1,000;
- (vi) on the next \$300,000,000 of these assets, 6 cents per \$1,000; and
- (vii) on all amounts over \$600,000,000 of these assets, 2 cents per \$1,000.

(2) A financial institution with a trust department shall pay a fee determined in accordance with Subsection (7) for each examination of the trust department by a state examiner.

(3) Notwithstanding Subsection (1), a credit union in its first year of operation shall pay a basic fee of \$25 instead of the fee required under Subsection (1).

(4) A trust company that is not a depository institution or a subsidiary of a depository institution holding company shall pay:

- (a) an annual fee of \$500; and
- (b) an additional fee determined in accordance with Subsection (7) for each examination by a state examiner.

(5) Any person or institution under the jurisdiction of the department that does not pay a fee under Subsections (1) through (4) shall pay:

- (a) an annual fee of \$200; and
- (b) an additional fee determined in accordance with Subsection (7) for each examination by a state examiner.

(6) A person filing an application or request under Section 7-1-503, 7-1-702, 7-1-703, 7-1-704, 7-1-713, 7-5-3, or 7-18a-202 shall pay:

(a) (i) a filing fee of \$500 if on the day on which the application or request is filed the person:

- (A) is a person with authority to transact business as:
 - (I) a depository institution;
 - (II) a trust company; or
 - (III) any other person described in Section 7-1-501 as being subject to the jurisdiction of the department; and

(B) has total assets in an amount less than \$5,000,000; or

(ii) a filing fee of \$2,500 for any person not described in Subsection (6)(a)(i); and

(b) all reasonable expenses incurred in processing the application.

(7) (a) Per diem assessments for an examination shall be calculated at the rate of \$55 per hour:

- (i) for each examiner; and
- (ii) per hour worked.

(b) For an examination of a branch or office of a financial institution located outside of this state, in addition to the per diem assessment under this Subsection (7), the institution shall pay all reasonable travel, lodging, and other expenses incurred by each examiner while conducting the examination.

(8) In addition to a fee under Subsection (5), a person registering under Section 7-23-201 or 7-24-201 shall pay an original registration fee of \$300.

Amended by Chapter 345, 2014 General Session

**7-1-402. Time for payment of fees -- Schedule of additional fees --
Revocation of permit or license for failure to pay fees.**

(1) All financial institutions or other persons under the jurisdiction of the department shall pay to the commissioner for the fiscal year beginning July 1, 1987, and annually thereafter, the fees, charges, and assessments for the costs of supervision, examination, and administration of the department and for processing all applications and notices as required under this title.

(2) All per diem and other examination fees shall be paid promptly upon order of the commissioner after completion of an examination. All other fees, unless otherwise provided, shall be assessed on July 1 and shall be payable to the commissioner on or before July 15.

(3) Any financial institution or other person subject to the jurisdiction of the department as of July 1 of each year shall pay the total fee for the fiscal year of July 1 through June 30.

(4) The commissioner may adopt a schedule of fees in addition to those provided in this section that may be assessed for services rendered by the department. These fees shall be reasonable and fair and shall reflect the cost of the services provided.

(5) The fees and assessments established in this section shall be in addition to any other fee or tax imposed by law.

(6) The commissioner may revoke the license or permit of any institution under the jurisdiction of the department for failure to pay the fees, charges, or assessments as provided in this title.

Amended by Chapter 133, 1991 General Session

7-1-403. Funds and balances paid to treasurer -- Separate account -- Use of funds.

(1) The commissioner shall deposit unexpended balances and money accruing to the department with the state treasurer monthly. The unexpended balances and money accruing to the department constitute a separate account within the General Fund. No part of the account may revert to the General Fund except an amount as required by law to be transferred for general government and administrative costs.

(2) With the approval of the director of the Division of Finance, the commissioner may withdraw money from the account to pay costs and expenses of administration incurred in proceedings under Chapter 1, General Provisions, Chapter 2, Possession of Depository Institution by Commissioner, and Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, or to use in connection with the rehabilitation, reorganization, or liquidation of an institution under the jurisdiction of the department.

(3) The commissioner, after consultation with the Board of Financial Institutions and with the approval of the director of the Division of Finance, may withdraw money from the account to promote, protect, and encourage the dual banking system and state-chartered institutions.

Amended by Chapter 189, 2014 General Session
Amended by Chapter 345, 2014 General Session

7-1-501. Institutions and persons subject to jurisdiction of department.

(1) As provided in this title and the rules of the department, the persons and institutions described in Subsection (2) are subject to:

- (a) the jurisdiction of the department; and
- (b) supervision and examination by the department.

(2) Subsection (1) applies to:

(a) all depository institutions chartered under the laws of this state, including any out-of-state branches;

(b) all Utah depository institutions chartered by the federal government, but only to the extent the application of this title is authorized by:

- (i) federal law; or
- (ii) the appropriate federal regulatory agency;

(c) all Utah branches of out-of-state depository institutions chartered under the laws of another state;

(d) all Utah branches of out-of-state depository institutions chartered by the federal government, but only to the extent the application of this title is authorized by:

- (i) federal law; or
- (ii) the appropriate federal regulatory agency;

(e) all service corporations and service organizations, including credit union service organizations as defined in Section 7-9-3;

(f) all trust companies;

(g) all escrow companies;

(h) all persons or institutions engaged in this state in the business of:

(i) guaranteeing or insuring deposits, savings accounts, share accounts, or other accounts in depository institutions;

(ii) operating a loan production office for:

- (A) a Utah depository institution;
- (B) an out-of-state depository institution; or
- (C) a foreign depository institution;

(iii) allowing persons to effect third party payments from loan, charge, or other accounts by checks, drafts, or other instruments or by electronic means; or

(iv) a check casher or deferred deposit lender, as defined in Section 7-23-102;

(i) all corporations or other business entities owning or controlling an institution subject to the jurisdiction of the department;

(j) all subsidiaries and affiliates of an institution subject to the jurisdiction of the department; and

(k) any person or institution that, with or without authority to do so, transacts business as, or holds itself out as being, a depository institution, trust company, or any other person or institution described in this section as being subject to the jurisdiction of the department.

Amended by Chapter 96, 2008 General Session

7-1-502. Limitations on jurisdiction of department.

(1) The jurisdiction of the department with respect to the persons and institutions described in Section 7-1-501 is limited as follows:

(a) to the portion of the business activities conducted in this state or with residents of this state, whether conducted solely or jointly by combination or contract; and

(b) to business activities that the department is not prohibited from regulating by the United States Constitution or laws of the United States.

(2) The jurisdictional limitations in Subsection (1) do not prohibit the commissioner from requiring an institution described in Section 7-1-501 to make available for inspection and examination books and records applicable to its business activities in this state, conducted with residents of this state, or relevant to the safety or soundness of a branch in this state. These book and records may include any report filed with a federal or state supervisory agency having jurisdiction over the institution.

(3) Section 7-1-501 does not authorize the department to supervise or regulate, by setting interest rates or otherwise, the operation of money market mutual funds or similar investments subject to supervision and regulation by another department or agency of this state or of the United States.

Amended by Chapter 49, 1995 General Session

7-1-503. Regulation of sale by financial institution of its securities -- Solicitation of deposit accounts restricted -- Violations.

(1) As used in this section, "security" has the same meaning as in Section 61-1-13, except that "security" does not include:

(a) a certificate of deposit or similar instrument issued by:

- (i) a bank;
- (ii) a savings and loan association;
- (iii) a credit union; or
- (iv) an industrial bank;

(b) a loan participation, letter of credit, or other form of indebtedness incurred in the ordinary course of business by:

- (i) a bank;
- (ii) a savings and loan association;
- (iii) a credit union; or
- (iv) an industrial bank; or

(c) (i) a promissory note or other evidence of indebtedness and the underlying security for it;

- (ii) a lease of personal property;
- (iii) a contract to sell real or personal property; or
- (iv) any other loan or investment sold by a depository institution in the secondary market.

(2) (a) A person subject to the jurisdiction of the department may not, directly or indirectly, issue, offer, offer to sell, offer for sale, or sell a security of which it is the issuer without:

- (i) the prior approval of the commissioner;

- (ii) payment of the fee prescribed in Section 7-1-401; and
 - (iii) complying with the rules of the department with respect to securities.
- (b) The commissioner may extend the approval described in Subsection (2)(a)(i) for one or more additional periods not to exceed six months each:
 - (i) if the person described in Subsection (2)(a) makes written application before the expiration of the period of approval; and
 - (ii) for good cause shown.
- (3) (a) A person not otherwise subject to the jurisdiction of the department may not issue, offer to sell, offer for sale, or sell, or otherwise solicit the general public to deposit in an account or to purchase or invest in an instrument creating or evidencing a debtor-creditor relationship, if the account or instrument is represented to be an account with or an instrument issued by a financial institution subject to the jurisdiction of the department, without:
 - (i) the prior approval of the commissioner;
 - (ii) payment of the fee prescribed in Section 7-1-401; and
 - (iii) complying with the rules of the department with respect to securities.
- (b) Subsection (3)(a) does not apply to:
 - (i) insurance companies that have been issued certificates of authority under Title 31A, Insurance Code;
 - (ii) brokers or dealers registered under:
 - (A) Title 61, Chapter 1, Utah Uniform Securities Act; or
 - (B) the federal Securities Exchange Act of 1934; or
 - (iii) nondepository institutions to the extent that the securities are not offered for sale or sold through or by agents, representatives, officers, or employees of an affiliated Utah depository institution; or
 - (iv) out-of-state depository institution with at least one branch in Utah or otherwise offered for sale or sold on its premises.
- (4) The rules of the department:
 - (a) shall, at a minimum, require registration with the department; and
 - (b) may require the use of an offering circular containing such material information as to the nature of the security and the financial condition of the issuer as the commissioner may require to protect the public interest.
- (5) The provisions of Sections 61-1-21, 61-1-21.1, and 61-1-22 apply to violations of this section.

Amended by Chapter 73, 2013 General Session

7-1-505. Rules and regulations governing persons or institutions not regulated under other chapters of title.

With respect to any person or institution or class of institutions subject to the jurisdiction of the department under this part and not regulated or supervised under any other chapter of this title, the commissioner shall issue appropriate rules and regulations consistent with the purposes and provisions of this title governing the regulation, supervision, and examination of those persons, institutions, or classes of institutions.

Amended by Chapter 356, 2009 General Session

7-1-507. Assessing institution's record in meeting credit needs -- Requirements -- Remedial order.

(1) With respect to institutions subject to the jurisdiction of the department that are engaged in soliciting deposits or selling or offering for sale evidences of indebtedness or similar investments, the commissioner shall periodically assess the institution's record of meeting the credit needs of residents of this state in relation to the deposits received from or investments sold to residents of this state.

(2) The commissioner may not impose requirements more restrictive than those applicable to federally chartered or federally insured depository institutions doing business in this state.

(3) The commissioner may order an institution to take remedial action consistent with the safe and sound operation of the institution that will promote the availability of credit to Utah residents.

Amended by Chapter 161, 1987 General Session

7-1-508. Conviction for fraud or dishonest conduct as disqualification to serve as officer, director or employee or to take control of a depository institution -- Violation as misdemeanor.

Except as may be expressly authorized by the commissioner, no person convicted of a felony or a misdemeanor involving fraud or dishonest conduct may serve as an officer, director, or employee of a depository institution. No such person, acting directly or indirectly or through or in concert with any one or more persons may acquire control of any depository institution. Violation of this paragraph is a class A misdemeanor.

Enacted by Chapter 16, 1981 General Session

7-1-510. Examination of institutions -- Adoption of rules -- Requiring actions by institutions.

If the commissioner finds that it is in the public interest and necessary to protect the depositors and other customers of a financial institution, he may:

(1) examine the books and records of any financial institution holding company and require the company to furnish whatever reports that he considers appropriate to properly supervise the company's financial institution subsidiaries;

(2) adopt and issue rules consistent with the purposes and provisions of this title as they pertain to financial institution holding companies; and

(3) require a financial institution holding company to take any action he finds reasonable and necessary to protect the interests of depositors, other customers, and creditors of any subsidiary financial institution, to maintain its solvency or to prevent its failure.

Amended by Chapter 161, 1987 General Session

7-1-601. Adverse claim to account in depository institution -- Notice required -- Bond may be required for payment.

Receipt of a notice of an adverse claim to a deposit or other account standing on the books of any depository institution doing business in this state does not obligate the depository institution to the adverse claimant, unless the notice is given pursuant to an appropriate court order, obtained by the adverse claimant in a legal action instituted by him in which the person to whose credit the deposit stands is made a party. Such depository institution may also pay the adverse claim, if the claimant executes to the depository institution a good and sufficient bond in double the amount claimed, indemnifying it from any and all liability, loss, damage, costs and expenses including attorneys' fees for and on account of the payment of the adverse claim or the dishonor of a check or other instrument of the person to whose credit the deposit stands on its books.

Enacted by Chapter 16, 1981 General Session

7-1-602. Final settlement of transaction account -- Limitation of action on accuracy of statement -- Duty to examine statement and notify of errors unaffected.

(1) Two years after a statement of a checking or other transaction account has been rendered to a depositor, the account shall be considered finally adjusted and settled and its correctness conclusively presumed as of the date the statement is rendered.

(2) The depositor may not maintain an action on the correctness or accuracy of the statement of account unless it is commenced within two years next after the date the statement was rendered.

(3) For the purpose of this section a statement of account shall be considered rendered if at the time the statement is purported to have been made, the depository institution in the course of its business regularly mailed or otherwise delivered to its depositor customers monthly or at other regular intervals statements of their checking and other transaction accounts, itemizing debit and credit entries.

(4) The date the statement is rendered is considered to be the first day of the month following the period covered by the statement as evidenced by the record of the account kept by the depository institution.

(5) Nothing in this section relieves a depositor from the duties imposed under Section 70A-4-406 to examine the statement of account, when rendered by the depository institution, and to immediately notify the depository institution of any errors discovered in it, nor from the legal consequences of neglect of those duties.

Enacted by Chapter 16, 1981 General Session

7-1-603. Final settlement of savings account -- Limitation of action on accuracy of statement.

(1) If the depository institution in the course of its business regularly records the credit balances of savings accounts in the savings account passbooks of its depositors or renders statements of the credit balances in their savings accounts at regular

intervals, the credit balance of any savings account with the depository institution as evidenced by its records is considered, after a period of six years from the date of the credit balance as shown by these records, to be finally adjusted and settled and its correctness is conclusively presumed.

(2) The owner of the savings account may not maintain an action on the correctness or accuracy of the credit balance, unless it is commenced within the six-year period described in Subsection (1).

Enacted by Chapter 16, 1981 General Session

7-1-604. Savings accounts -- Qualifications to hold -- Representation -- Transfer -- Holder treated as owner -- Exception.

(1) Savings accounts may be opened and held solely and absolutely by any adult or minor individual, male or female, single or married in his or her own right or in trust or other fiduciary capacity for any such adult or minor.

(2) Savings accounts shall be represented only by the account of each savings account holder on the books of the depository institution.

(3) Savings accounts shall be transferable only on the books of the depository institution and only upon written application. Acceptance by the institution of the transferee as an account holder may only be upon terms approved by its board of directors. Nothing in this subsection shall be construed as prohibiting the transfer of part or all of the funds in a transaction account to a third party by means of checks, drafts, or other instruments or by electronic means.

(4) The institution may treat the holder of record of a savings account as the owner of the account for all purposes and may disregard any notice to the contrary, unless the institution has acknowledged, in writing, notice of a pledge of the savings account.

Enacted by Chapter 16, 1981 General Session

7-1-605. Savings accounts -- Special terms to be in writing.

Any special terms and provisions applicable to a savings account, the ownership of a savings account, or the conditions upon which withdrawals may be made, or all of those, shall be clearly and truthfully set forth in writing. The provisions appearing on a signature card or in rules and regulations for the account shall satisfy the foregoing requirements of this section.

Enacted by Chapter 16, 1981 General Session

7-1-606. Savings accounts and credit union share accounts -- Form of ownership certificate.

A certificate of ownership may be issued to each savings account or credit union share account holder of record as shown by the books of the institution and may be in separate certificate form, or from time to time incorporated in an account book, statement of account, certificate of savings account withdrawal value, or card, device or other evidence or means of access or identity or may be shown in book entry form on

the books of the institution, at the discretion of the institution. An account established in statement, book entry or other form shall be evidenced by a written agreement and deposits shall be confirmed by issuance of a receipt or advice.

Amended by Chapter 8, 1983 General Session

7-1-607. Lost or destroyed account book or certificate.

If the holder of record of an account as shown by the books of a depository institution, or his legal representative, files with the institution an affidavit to the effect that the account book or certificate has been lost or destroyed and has not been pledged or assigned in whole or in part, the institution shall issue a new account book or certificate in the name of the holder of record. The new account book or certificate shall state that it is issued in lieu of the one lost or destroyed. The institution is not liable thereafter on the original account book or certificate. However, the board of directors of the institution shall, if in its judgment it is necessary, require a bond in an amount it considers sufficient to indemnify the institution against any loss which might result from the issuance of the new account book or certificate.

Amended by Chapter 378, 2010 General Session

7-1-608. School or institutional savings plans authorized.

A depository institution may contract with any public or non-public elementary or secondary school or institution of higher learning, or any public or charitable institution caring for minors, for the participation and implementation by the depository institution in any school or institutional savings plan, and it may accept savings accounts at the school or institution, either by its own collector or by any representative of the school or institution which becomes the agent of the depository institution for that purpose.

Enacted by Chapter 16, 1981 General Session

7-1-609. Payroll deduction savings -- Direct deposit of wages.

A depository institution may contract with an employer with respect to the:

- (1) solicitation, collection, and receipt of savings by payroll deduction to be credited to a designated account of an employer's employee who voluntarily elects to participate; or
- (2) direct deposit by electronic or other medium of wages or salary paid by the employer to the account of the employee in a depository institution upon the employee's designation in writing of the depository institution as the recipient of the deposits.

Amended by Chapter 90, 1996 General Session

7-1-610. Attorney-in-fact as to savings account -- Institution immune from liability.

Any depository institution may continue to recognize the authority of an attorney-in-fact authorized in writing to manage or to make withdrawals either in whole or in part from the savings account of a holder, whether minor or adult, until it is on

actual notice of the revocation of his authority. No such institution shall be liable for damages, penalty, or tax by reason of any payment made under this section.

Enacted by Chapter 16, 1981 General Session

7-1-611. Deposit accounts of minors or married persons.

(1) A depository institution may issue a deposit account to a married person or minor as the sole and absolute owner of the deposit account, and receive payment on the account by or for the owner, and pay withdrawals, accept pledges to the institution, and act in any other manner with respect to the account on the order of the married person or minor.

(2) A payment or delivery of rights to a married person or minor, or a receipt or acquisition signed by a married person or minor who holds a deposit account, shall be a valid and sufficient release and discharge of the institution for any payment so made or delivery of rights to the married person or minor.

(3) In the case of a minor, the receipt, acquittance, pledge, or other action required by the institution to be taken by the minor shall be binding upon the minor with like effect as if the minor were of full age and legal capacity.

(4) The parent or guardian of the minor may not in the capacity as parent or guardian have the power to attach or in any manner to transfer any deposit account issued to or in the name of the minor. However, in the event of the death of the minor, the receipt or acquittance of either parent or of a person standing in loco parentis to the minor shall be a valid and sufficient discharge of the institution for any sum or sums not exceeding in the aggregate \$2,500, unless the minor gave written notice to the institution not to accept the signature of the parent or person.

Amended by Chapter 182, 1996 General Session

7-1-612. Pledge or hypothecation of joint savings accounts.

The pledge or hypothecation to any depository institution of all or part of a savings account in joint tenancy signed by any tenant or tenants whether minor or adult, upon whose signature or signatures withdrawals may be made from the account shall, unless the terms of the savings account provide specifically to the contrary, be a valid pledge and transfer to the institution of that part of the account pledged or hypothecated, and does not operate to sever or terminate the joint and survivorship ownership of all or any part of the account.

Amended by Chapter 378, 2010 General Session

7-1-613. Incompetency of savings account owner.

When a savings account is held in any depository institution by a person who becomes incompetent and an adjudication of incompetency has been made by a court of competent jurisdiction, the institution may pay or deliver the withdrawal value of the savings account and any earnings that may have accrued on the account to the conservator for that person upon proof of his appointment and qualification. However, if the institution has received no written notice and is not on actual notice that the savings

account holder has been adjudicated incompetent, it may pay or deliver the funds to the holder in accordance with the provision of the savings account contract, and the receipt or acquittance of the holder therefor shall be a valid and sufficient release and discharge of the institution for the payment or delivery so made.

Enacted by Chapter 16, 1981 General Session

7-1-616. Authority to accept transaction accounts -- Payment of instruments.

(1) A financial institution may accept or advertise that it accepts transaction accounts only if authorized to do so under federal or state law. An institution may submit a written request for this authority to the commissioner, except that an institution authorized to accept transaction accounts as of June 1, 1994, does not, in the first instance, need to request or be granted any additional authority. The commissioner shall grant the authority if the commissioner finds that:

- (a) the institution has adequate capital and reserves in relation to the character and condition of its assets and its deposit and other liabilities;
- (b) the deposits and other accounts held by the institution are insured or guaranteed by an agency of the federal government; and
- (c) the management of the institution is qualified to handle transaction accounts.

(2) The commissioner may revoke, limit, or condition an institution's authority to accept and handle transaction accounts upon a finding that:

- (a) the institution no longer meets the criteria set forth in Subsection (1); or
- (b) it would be contrary to the public interest and the soundness of the financial system of this state to allow the institution to continue to accept or handle transaction accounts without limitation or condition.

(3) One or more depository institutions may, by written agreement, vary the terms of Title 70A, Chapter 3, Uniform Commercial Code - Negotiable Instruments, and Chapter 4, Uniform Commercial Code - Bank Deposits and Collections, for the purposes of facilitating the transfer, exchange, and prompt payment of instruments drawn on transaction accounts.

Amended by Chapter 189, 2014 General Session

7-1-617. No concentration limit under state law.

(1) There is no state deposit cap or concentration limit under Utah law. A depository institution or depository institution holding company may control any percentage of the total deposits held within this state by all depository institutions of the same class.

(2) To the extent authorized by federal law, the commissioner may, on a case by case basis, waive any applicable federal deposit concentration limit that has the effect of being more limiting than Subsection (1). In making a decision to waive a federal deposit concentration limit, the commissioner shall apply a standard that does not discriminate against out-of-state depository institutions, upon a finding that the waiver promotes:

- (a) the availability of financial services;

- (b) the marketability of Utah depository institutions; or
- (c) another public interest.
- (3) This section does not affect the applicability, if any, of antitrust law.

Enacted by Chapter 49, 1995 General Session

7-1-618. Deposit production offices prohibited.

(1) Except as provided in Subsection (2), it is unlawful to establish or operate a deposit production office or similar office in this state for the purpose of soliciting deposits or similar evidence of indebtedness or participation interests in indebtedness.

(2) This prohibition does not apply to:

- (a) activities conducted at a main office or branch of the depository institution conducting the activities; or
- (b) activities conducted at the main office or branch of an affiliate depository institution acting as an agent to the extent permitted under Section 7-1-716.

Enacted by Chapter 49, 1995 General Session

7-1-701. Representing and transacting business as financial institution restricted -- Restricted names -- Penalty.

(1) As used in this section, "transact business" includes:

- (a) advertising;
- (b) representing oneself in any manner as being engaged in transacting business;
- (c) registering an assumed name under which to transact business; or
- (d) using an assumed business name, sign, letterhead, business card, promotion, or other indication that one is transacting business.

(2) Unless authorized by the department or an agency of the federal government to do so, it is unlawful for a person to:

- (a) transact business as a:
 - (i) bank;
 - (ii) savings and loan association;
 - (iii) savings bank;
 - (iv) industrial bank;
 - (v) credit union;
 - (vi) trust company; or
 - (vii) other financial or depository institution; or
- (b) engage in any other activity subject to the jurisdiction of the department.

(3) (a) Except as provided in Subsections (3)(b) through (d), only the following may transact business in this state under a name that includes "bank," "banker," "banking," "banque," "banc," "banco," "bancorp," "bancorporation," a derivative of these words, or another word or combination of words reasonably identifying the business of a bank:

- (i) a national bank;
- (ii) a bank authorized to do business under Chapter 3, Banks;
- (iii) a bank holding company; or

(iv) an industrial bank.

(b) A person authorized to operate in this state as a credit card bank, as described in Section 7-3-3:

(i) may transact business under the name "credit card bank"; and

(ii) may not transact business under the name of "bank" unless it is immediately preceded by "credit card."

(c) A nonbank subsidiary of a bank holding company may transact business under a name restricted in Subsection (3)(a) if the name:

(i) is also part of the name of its parent holding company; or

(ii) is used for a group of subsidiaries of the parent holding company.

(d) A bona fide trade association of authorized banks recognized by the commissioner may transact its affairs in this state under a name restricted under Subsection (3)(a) if it does not operate and does not hold itself out to the public as operating a depository or financial institution.

(4) (a) Except as provided in Subsection (4)(b), only the following may transact business in this state under a name that includes "savings association," "savings and loan association," "building and loan association," "building association," a derivative of these words, or another word or combination of words reasonably identifying the business of a savings and loan association:

(i) a federal savings and loan association; or

(ii) a federal savings bank.

(b) A national bank may transact business under a name restricted in Subsection (4)(a) if the restricted words are part of the bank's corporate name.

(5) Only the following may transact business under the name "savings bank":

(a) a depository institution listed in Subsection (3)(a);

(b) a depository institution listed in Subsection (4)(a); or

(c) a depository institution authorized under the law of another state to operate in this state as a savings bank.

(6) (a) Only an industrial loan company authorized to do business under Chapter 8, Industrial Banks, to the extent permitted by Section 7-8-21, may transact business in this state under a name that includes "industrial loan company," "ILC," or another word, combination of words, or abbreviation reasonably identifying the business of an industrial loan company.

(b) Only an industrial bank authorized to do business under Chapter 8, Industrial Banks, may transact business in this state under a name that includes "industrial bank," "thrift," or another word, combination of words, or abbreviation reasonably identifying the business of an industrial bank.

(7) (a) Except as provided in Subsection (7)(b), only a credit union authorized to do business under the laws of the United States or Chapter 9, Utah Credit Union Act, may transact business in this state under a name that includes "credit union" or another word or combination of words reasonably identifying the business of a credit union.

(b) The restriction in Subsection (7)(a) does not apply to a bona fide trade association of authorized credit unions recognized by the commissioner, a credit union chapter, or another association affiliated with a bona fide trade association of authorized credit unions recognized by the commissioner that restricts its services primarily to credit unions.

(8) (a) Except as provided in Subsection (8)(b), only a person granted trust powers under Chapter 5, Trust Business, may transact business in this state under a name that includes "trust," "trustee," "trust company," or another word or combination of words reasonably identifying the business of a trust company.

(b) A business entity organized as a business trust, as defined in Section 7-5-1, may use "business trust" in its name if it does not hold itself out as being a trust company.

(9) The restrictions of Subsections (3) through (8) do not apply to:

(a) the name under which an out-of-state depository institution operates a loan production office in this state, if the commissioner approves the name as not being reasonably likely to mislead the public;

(b) the name under which a service organization of a financial institution transacts business, if the commissioner approves the name as not being reasonably likely to mislead the public;

(c) the name under which a subsidiary of a depository or financial institution transacts business, if the commissioner approves the name as not being reasonably likely to mislead the public; or

(d) a trade association or other nonprofit organization composed of members of a particular class of financial institutions using words applicable to that class.

(10) (a) Upon written request, the commissioner may grant an exemption to this section if the commissioner finds that the use of an otherwise restricted name or word is not reasonably likely to cause confusion or lead the public to believe that the person requesting the exemption is a depository or financial institution or is conducting a business subject to the jurisdiction of the department.

(b) In granting an exemption under Subsection (10)(a), the commissioner may restrict or condition the use of the name or word or the activities of the person or business as the commissioner considers necessary to protect the public.

(11) (a) A person and a principal and officer of a business entity violating this section is guilty of a class A misdemeanor. Each day of violation constitutes a separate offense.

(b) In addition to a criminal penalty imposed under Subsection (11)(a), the commissioner may issue a cease and desist order against a person violating this section. The commissioner may impose a civil penalty of up to \$500 for each day the person fails to comply with the cease and desist order.

Amended by Chapter 97, 2014 General Session

7-1-702. Interstate acquisition, merger, and branching.

(1) A Utah depository institution or its holding company may acquire control of, acquire all or substantially all the assets of, or merge with:

(a) an out-of-state depository institution; or

(b) a holding company of an out-of-state depository institution.

(2) An out-of-state depository institution or its holding company may acquire control of, acquire all or substantially all the assets of, or merge with:

(a) a Utah depository institution; or

(b) a holding company of a Utah depository institution.

(3) A Utah depository institution may acquire, through merger or otherwise, a branch of a depository institution in another state without acquiring:

- (a) the depository institution in the other state; or
- (b) the charter of the depository institution described in Subsection (3)(a).

(4) An out-of-state depository institution may acquire, through merger or otherwise, a branch of a depository institution in Utah without acquiring:

- (a) the Utah depository institution; or
- (b) the charter of the Utah depository institution.

(5) (a) A Utah depository institution may establish a de novo branch in any state that allows de novo interstate branching as described in 12 U.S.C. Secs. 36(g) and 1828(d)(4), as amended.

(b) Except as provided in Subsection (5)(c), de novo interstate branching in Utah is prohibited.

(c) An out-of-state depository institution may establish a de novo branch in Utah if the home state of that out-of-state depository institution permits a Utah state chartered depository institution to establish and maintain a de novo branch in that home state under substantially the same terms and conditions as that out-of-state depository institution establishes its de novo branch in Utah.

(6)(a) Any of the following may do anything described in Subsection (6)(b):

(i) a Utah depository institution or holding company that acquires an out-of-state depository institution;

(ii) a Utah depository institution that is the resulting depository institution after merging with an out-of-state depository institution; or

(iii) a Utah depository institution that otherwise establishes or acquires a branch in a host state.

(b) A depository institution or holding company described in Subsection (6)(a) may do any of the following in accordance with applicable state and federal law, including the law of the host state:

(i) continue to operate the out-of-state depository institution or branch;

(ii) convert any existing main office or branch in the host state into a branch of the Utah depository institution;

(iii) establish or acquire additional branches of the Utah depository institution in any state where the out-of-state depository institution could have done so if the out-of-state depository institution had not been acquired or merged; and

(iv) exercise any power and engage in any activity in a host state to the same extent as a depository institution of the same class whose home state is that state.

(7)(a) Any of the following may do anything described in Subsection (7)(b):

(i) an out-of-state depository institution or holding company that acquires a Utah depository institution;

(ii) an out-of-state depository institution that is the resulting depository institution after merging with a Utah depository institution; or

(iii) an out-of-state depository institution that otherwise establishes or acquires a branch in Utah.

(b) A depository institution or holding company described in Subsection (7)(a) may do any of the following in accordance with applicable state and federal law, including the law of this state:

- (i) continue to operate the Utah depository institution or branch;
 - (ii) convert any existing main office or branch in Utah into a branch of the out-of-state depository institution;
 - (iii) establish or acquire additional branches of the out-of-state depository institution in any state where the Utah depository institution could have done so if the Utah depository institution had not been acquired or merged; and
 - (iv) exercise any power and engage in any activity in this state to the same extent as a depository institution of the same class whose home state is Utah.
- (8) (a) A Utah branch of an out-of-state depository institution shall comply with:
- (i) the law of the institution's home state; or
 - (ii) the federal law in the case of a federally chartered institution.
- (b) If the laws of this state as a host state conflict with the laws of another state as a home state, the laws of the home state prevail except as provided in this section.
- (c) The commissioner may order that Utah law prevails over home state law if the application of Utah law is necessary to:
- (i) preserve the safe and sound operation of the Utah branch;
 - (ii) prevent significant competitive disadvantage to Utah depository institutions in local financial markets; or
 - (iii) otherwise protect the citizens of this state.
- (d) The laws of this state regarding community reinvestment, consumer protection, fair lending, and intrastate branching apply to a Utah branch of an out-of-state depository institution to the same extent as those laws apply to a Utah branch of a depository institution chartered by this state.
- (e) An out-of-state depository institution authorized to operate a branch in Utah may underwrite or sell insurance, engage in the direct marketing of securities, or engage in the brokerage of real estate only to the extent permissible for a Utah depository institution of the same class.
- (9) Subsection (8) does not affect the jurisdiction or authority of the commissioner to:
- (a) examine, supervise, and regulate an out-of-state depository institution operating or seeking to operate a branch in this state; or
 - (b) take any action or issue any order with regard to a branch described in Subsection (9)(a).
- (10) The acquisition of a charter entitles the acquiring institution to engage in any activity the acquired institution could have engaged in if the acquired institution had not been acquired, so long as the acquiring institution does not convert the acquired institution into, or operate it as, an institution of a different class.
- (11) (a) The activities authorized in this section are subject to:
- (i) the limitations for mergers and acquisitions set forth in Sections 7-1-703 and 7-1-705; and
 - (ii) the limitations for branching set forth in Section 7-1-708.
- (b) An institution shall file all required applications and receive all appropriate approvals before engaging in any of the activities authorized in this section.
- (12) An out-of-state depository institution that operates a branch in this state shall:
- (a) maintain a certificate of authority to transact business in this state;

(b) comply with all applicable corporate filing requirements under Title 16, Chapter 10a, Utah Revised Business Corporation Act, to the same extent as any nondepository corporation transacting business in this state; and

(c) provide written notification to the department of the out-of-state depository certificate of authority to transact business in this state.

Amended by Chapter 211, 2001 General Session

**7-1-703. Restrictions on acquisition of institutions and holding companies
-- Enforcement.**

(1) Unless the commissioner gives prior written approval under Section 7-1-705, no person may:

(a) acquire, directly or indirectly, control of a depository institution or depository institution holding company subject to the jurisdiction of the department;

(b) vote the stock of any depository institution or depository institution holding company subject to the jurisdiction of the department acquired in violation of Section 7-1-705;

(c) acquire all or any portion of the assets of a depository institution or a depository institution holding company subject to the jurisdiction of the department;

(d) assume all or any portion of the deposit liabilities of a depository institution subject to the jurisdiction of the department;

(e) take any action that causes a depository institution to become a subsidiary of a depository institution holding company subject to the jurisdiction of the department;

(f) take any action that causes a person other than an individual to become a depository institution holding company subject to the jurisdiction of the department;

(g) acquire, directly or indirectly, the voting or nonvoting securities of a depository institution or a depository institution holding company subject to the jurisdiction of the department if the acquisition would result in the person obtaining more than 20% of the authorized voting securities of the institution if the nonvoting securities were converted into voting securities; or

(h) merge or consolidate with a depository institution or depository institution holding company subject to the jurisdiction of the department.

(2) Any person who willfully violates any provision of this section or any rule or order issued by the department under this section is subject to a civil penalty of not more than \$1,000 per day during which the violation continues. The commissioner may assess the civil penalty after giving notice and opportunity for hearing. The commissioner shall collect the civil penalty by bringing an action in the district court of the county in which the office of the commissioner is located. Any applicant for approval of an acquisition is considered to have consented to the jurisdiction and venue of the court by filing an application for approval.

(3) The commissioner may secure injunctive relief to prevent any change in control or impending violation of this section.

(4) The commissioner may lengthen or shorten any time period specified in Section 7-1-705 if the commissioner finds it necessary to protect the public interest.

(5) The commissioner may exempt any class of financial institutions from this section by rule if the commissioner finds the exception to be in the public interest.

(6) The prior approval of the commissioner under Section 7-1-705 is not required for the acquisition by a person other than an individual of voting securities or assets of a depository institution or a depository institution holding company that are acquired by foreclosure or otherwise in the ordinary course of collecting a debt previously contracted in good faith if these voting securities or assets are divested within two years of acquisition. The commissioner may, upon application, extend the two-year period of divestiture for up to three additional one-year periods if, in the commissioner's judgment, the extension would not be detrimental to the public interest. The commissioner may adopt rules to implement the intent of this Subsection (6).

(7) (a) An out-of-state depository institution without a branch in Utah, or an out-of-state depository institution holding company without a depository institution in Utah, may acquire:

(i) a Utah depository institution only if it has been in existence for at least five years; or

(ii) a Utah branch of a depository institution only if the branch has been in existence for at least five years.

(b) For purposes of Subsection (7)(a), a depository institution chartered solely for the purpose of acquiring another depository institution is considered to have been in existence for the same period as the depository institution to be acquired, so long as it does not open for business at any time before the acquisition.

(c) The commissioner may waive the restriction in Subsection (7)(a) in the case of a depository institution that is subject to, or is in danger of becoming subject to, supervisory action under Chapter 2, Possession of Depository Institution by Commissioner, or Chapter 19, Acquisitions of Failing Repository Institutions or Holding Companies, or, if applicable, the equivalent provisions of federal law or the law of the institution's home state.

(d) The restriction in Subsection (7)(a) does not apply to an acquisition of, or merger transaction between, affiliate depository institutions.

Amended by Chapter 189, 2014 General Session

7-1-704. Authorization required to engage in business -- Exemptions -- Procedure.

(1) (a) An institution subject to the jurisdiction of the department may maintain an office in this state or engage in the activities of a financial institution in this state only if it is authorized to do so by the department.

(b) This Subsection (1) does not apply to:

(i) any person who is lawfully engaging in the activities of a financial institution in this state on July 1, 1981, unless the institution was not subject to the jurisdiction of the department before that date;

(ii) an application to establish a branch or additional office; or

(iii) the establishment of a service corporation or service organization.

(2) An applicant for authorization to become an institution subject to the jurisdiction of the department shall pay to the department the appropriate filing fee, as provided in Section 7-1-401, and shall file with the commissioner:

(a) its undertaking to pay all expenses incurred in conducting any administrative

proceedings forming part of the department's consideration of the application;

(b) its proposed articles of incorporation and by-laws;

(c) an application in a form prescribed by the commissioner that includes all information the commissioner requires about the source of the proposed original capital and about the identity, personal history, business background and experience, financial condition, and participation in any litigation or administrative proceeding of the organizers, the proposed members of the board of directors, and the principal officers; and

(d) any other information the commissioner requires.

(3) In addition to the requirements of Title 63G, Chapter 4, Administrative Procedures Act, the commissioner shall, at the expense of the applicant:

(a) (i) give notice of the application by publication in three successive issues of a newspaper of general circulation in the county where the principal place of business is to be established; and

(ii) give notice of the application by publication as required in Section 45-1-101; and

(b) give notice of the application to other institutions subject to the jurisdiction of the department in a manner and to an extent the commissioner considers appropriate;

(c) cause the appropriate supervisor to make a careful investigation and examination of the following:

(i) the character, reputation, and financial standing and ability of the organizers;

(ii) the character, financial responsibility, experience, and business qualifications of those proposed as officers;

(iii) the character and standing in the community of those proposed as directors, principal stockholders, or owners;

(iv) the need in the service area where the institution would be located, giving particular consideration to the adequacy of existing financial facilities and the effect the proposed institution would have on existing institutions in the area;

(v) the ability of the proposed service area to support the proposed institution, including the extent and nature of existing competition, the economic history and future prospects of the community, and the opportunity for profitable employment of financial institution funds; and

(vi) other facts and circumstances bearing on the proposed institution that the supervisor considers relevant.

(4) (a) The supervisor shall submit findings and recommendations in writing to the commissioner.

(b) The application, any additional information furnished by the applicant, and the findings and recommendations of the supervisor may be inspected by any person at the department's office, except those portions of the application or report the commissioner declares to be confidential, pursuant to the applicant's request, in order to prevent a clearly unwarranted invasion of privacy.

(5) (a) If a hearing is held, the applicant shall publish notice of the hearing at the applicant's expense:

(i) in a newspaper of general circulation within the county where the proposed institution is to be located at least once a week for three successive weeks before the date of hearing; and

(ii) as required in Section 45-1-101 for three weeks before the date of the hearing.

(b) The notice shall include the date, time, and place of the hearing and any other information required by the commissioner.

(c) The commissioner shall act on the record before him within 30 days after receipt of the transcript of the hearing.

(6) If no hearing is held, the commissioner may, within 90 days of acceptance of the application as complete, approve or disapprove the application based on the papers filed with him, together with the supervisor's findings and recommendations.

(7) (a) The commissioner may not approve the application unless the commissioner finds that the applicant has established by the preponderance of the evidence that:

(i) in light of the need for financial services in the area, the adequacy of existing facilities, and the effect the proposed institution would have on existing institutions in the area, the public need and convenience will be promoted by the establishment of the proposed institution;

(ii) in light of the ability of the proposed service area to support the proposed institution, including the extent and nature of existing competition, the economic history and future prospects of the community, and the opportunity for profitable employment of financial institution funds, conditions in the service area in which the proposed institution would transact business afford reasonable promise of a successful operation;

(iii) the institution is being formed only for legitimate purposes allowed by the laws of this state;

(iv) the proposed capital equals or exceeds the required minimum and is adequate in light of current and prospective conditions;

(v) if the applicant is seeking authority to accept deposits, the deposits will be insured or guaranteed by an agency of the federal government;

(vi) the proposed officers and directors have sufficient experience, ability, and standing to afford reasonable promise of a successful operation;

(vii) the name of the proposed financial institution does not resemble the name of any other institution transacting business in this state so closely as to cause confusion;

(viii) the applicants have complied with all of the provisions of law; and

(ix) no properly managed and soundly operated existing institutions offering substantially similar services in the service area to which the application relates will be unduly injured by approval of the application.

(b) The commissioner may condition approval of the application on the institution's acceptance of requirements or conditions with respect to insurance that the commissioner considers necessary to protect depositors.

(8) (a) The commissioner shall provide written findings and conclusions on the application.

(b) Upon approving an application, the commissioner shall:

(i) endorse the approval on the articles of incorporation;

(ii) file one copy with the Division of Corporations and Commercial Code;

(iii) retain one file copy; and

(iv) return one copy to the applicant within 10 days after the date of the

commissioner's decision approving the application.

(c) Upon disapproving an application, the commissioner shall mail notice of the disapproval to the applicant within 10 days.

(d) The commissioner may approve an application subject to conditions the commissioner considers appropriate to protect the public interest and carry out the purposes of this title.

(e) The commissioner shall give written notice of the decision to all persons who have filed a protest to the application.

(9) Upon approval of an application for authorization to conduct a business subject to the jurisdiction of the department, the commissioner shall issue a license, permit, or other appropriate certificate of authority if:

(a) except in the case of credit unions, all of the capital of the institution being formed has been paid in; and

(b) all the conditions and other requirements for approval of the application have been met.

(10) (a) Any approval by the commissioner of an application under this section is considered revoked unless the business is open and operating within one year from the date of the approval.

(b) The commissioner, on written application made before the expiration of that period, and for good cause shown, may extend the date for activation for additional periods not to exceed six months each.

(11) No person may obtain, for the purpose of resale, a certificate of approval to operate any institution under the jurisdiction of the department.

(12) The commissioner may approve an application without any notice to other financial institutions to respond to an emergency arising from the insolvency of an existing institution or to prevent the failure of an existing institution if the commissioner makes the findings required by Subsection (7).

Amended by Chapter 388, 2009 General Session

**7-1-705. Approval required for certain transactions -- Application --
Grounds for disapproval.**

(1) Except as provided in Subsection (5), an applicant for authorization to engage in any of the transactions described in Sections 7-1-702 and 7-1-703 shall file with the commissioner:

(a) an application in a form prescribed by the commissioner;

(b) the fee prescribed for the transaction by the commissioner;

(c) other information that is required by rule, or that the commissioner considers necessary to make the findings required by Subsection (3); and

(d) if the applicant is not a Utah resident, a Utah corporation, or an out-of-state corporation qualified to do business in this state, a written consent to service of process on a resident of this state in any action or suit arising out of or connected with the proposed action.

(2) (a) Within 60 days of acceptance of the application as complete, the commissioner shall respond to the application by writing the commissioner's findings of fact, conclusions, and order.

(b) The commissioner may approve an application subject to the terms and conditions the commissioner considers necessary to protect the public interest and carry out the purposes of this title.

(c) The commissioner may defer acceptance of the application as complete until the applicant has provided any information the commissioner considers necessary to decide whether to approve or deny the application.

(3) The commissioner may disapprove any application filed under this section if the commissioner finds that:

(a) the proposed transaction would be detrimental to the safety and soundness of the applicant, to any institution that is a party to the transaction, or to a subsidiary or affiliate of that institution;

(b) the applicant, its executive officers, directors, or principal stockholders have not established a record of sound performance, efficient management, financial responsibility, and integrity so that it would be against the interest of the depositors, other customers, creditors, or shareholders of an institution, or the public to authorize the proposed transaction;

(c) the financial condition of the applicant or any other institution that is a participant in the proposed transaction might jeopardize the financial stability of the applicant or other institution, or prejudice the interests of depositors or other customers of the applicant or other institutions;

(d) the consummation of the proposed transaction will tend to substantially lessen competition, unless the commissioner finds that the anticompetitive effects of the proposed transaction are clearly outweighed by the benefit of meeting the convenience and needs of the relevant market area to be served;

(e) the applicant has not established a record of meeting the credit needs of the communities that it or its subsidiary depository institution serves; or

(f) in the case of an interstate transaction, the applicant fails to obtain any required approval from a federal or state agency with regulatory authority over any of the institutions participating in the transaction.

(4) In the case of an interstate transaction, the commissioner may accept an application in the form and manner prescribed by the state or federal agency that primarily regulates the applicant, supplemented as necessary to enable the commissioner to decide whether to approve or deny the application.

(5) (a) The following branching activities, if they do not involve a merger or acquisition, are not subject to the requirements of this section, but are subject to Section 7-1-708:

(i) the establishment of a branch in Utah or another state by an out-of-state depository institution with a previously established branch in Utah; and

(ii) the establishment of a branch in another state by a Utah depository institution.

(b) Other interstate branching activities are subject to the requirements of both this section and Section 7-1-708.

Amended by Chapter 49, 1995 General Session

7-1-706. Application to commissioner to exercise power -- Procedure.

(1) Except as provided in Sections 7-1-704 and 7-1-705, by filing a request for agency action with the commissioner, any person may request the commissioner to:

- (a) issue any rule or order;
- (b) exercise any powers granted to the commissioner under this title; or
- (c) act on any matter that is subject to the approval of the commissioner.

(2) Within 10 days of receipt of the request, the commissioner shall, at the applicant's expense, cause a supervisor to make a careful investigation of the facts relevant or material to the request.

(3) (a) The supervisor shall submit written findings and recommendations to the commissioner.

(b) The application, any additional information furnished by the applicant, and the findings and recommendations of the supervisor may be inspected by any person at the office of the commissioner, except those portions of the application or report that the commissioner designates as confidential to prevent a clearly unwarranted invasion of privacy.

(4) (a) If a hearing is held concerning the request, the commissioner shall publish notice of the hearing at the applicant's expense:

(i) in a newspaper of general circulation within the county where the applicant is located at least once a week for three successive weeks before the date of the hearing; and

(ii) on the Utah Public Notice Website created in Section 63F-1-701, for three weeks before the date of the hearing.

(b) The notice required by Subsection (4)(a) shall include the information required by the department's rules.

(c) The commissioner shall act upon the request within 30 days after the close of the hearing, based on the record before the commissioner.

(5) (a) If no hearing is held, the commissioner shall approve or disapprove the request within 90 days of receipt of the request based on:

- (i) the application;
- (ii) additional information filed with the commissioner; and
- (iii) the findings and recommendations of the supervisor.

(b) The commissioner shall act on the request by issuing findings of fact, conclusions, and an order, and shall mail a copy of each to:

- (i) the applicant;
- (ii) all persons who have filed protests to the granting of the application; and
- (iii) other persons that the commissioner considers should receive copies.

(6) The commissioner may impose any conditions or limitations on the approval or disapproval of a request that the commissioner considers proper to:

- (a) protect the interest of creditors, depositors, and other customers of an institution;
- (b) protect its shareholders or members; and
- (c) carry out the purposes of this title.

Amended by Chapter 90, 2010 General Session

7-1-708. Establishing branches and relocating offices -- Application and

procedure for approval -- Nonexempt credit unions.

(1) A Utah depository institution or an out-of-state depository institution with a Utah branch or seeking to acquire a branch in this state may establish one or more branches, or relocate a branch office or its main office in this state, subject to the prior approval of the commissioner.

(2) The approval of the commissioner required by Subsection (1) may be obtained by:

(a) filing an application with the department in a form the commissioner prescribes; and

(b) supplementing the application with information the commissioner considers material to determining whether to approve the application.

(3) (a) The commissioner shall approve or disapprove an application within 30 days after accepting the application as complete.

(b) If the commissioner does not approve or disapprove an application within the time stated in Subsection (3)(a), the application is considered approved.

(4) (a) The commissioner shall cause a supervisor to make an investigation of the facts relevant or material to an application.

(b) The supervisor that conducts the investigation required by Subsection (4)(a) shall submit written findings and recommendations to the commissioner.

(5) An application, any supplemental information furnished by the applicant, and the findings and recommendations of the supervisor may be inspected by any person at the department's office, except those portions of the application the commissioner declares to be confidential to prevent a clearly unwarranted invasion of privacy, pursuant to the applicant's request.

(6) To protect the safety and soundness of the applicant, the commissioner may:

(a) approve an application subject to the terms and conditions the commissioner considers necessary; or

(b) disapprove an application.

(7) (a) The commissioner's approval of any application under this section is considered revoked, unless the office is opened and operating within one year of the date approved by the commissioner for commencement of operations.

(b) The commissioner may extend the date for activation for up to two additional periods of not more than six months each:

(i) upon written application made before the expiration of a period; and

(ii) for good cause shown.

(8) An out-of-state depository institution with a branch in Utah is not subject to the requirements of this section if the office or branch to be established or relocated is located outside of Utah.

(9) (a) For purposes of determining whether a nonexempt credit union may establish a branch, a nonexempt credit union is considered to be establishing a branch if the nonexempt credit union establishes:

(i) notwithstanding Section 7-1-103, a loan production office; or

(ii) any other office or facility that:

(A) is owned or operated by:

(I) the nonexempt credit union; or

(II) a credit union service organization in which the nonexempt credit union holds an ownership interest;

(B) is open to the public; and

(C) provides any product or service of the nonexempt credit union to a member of the nonexempt credit union.

(b) This section may not be interpreted as authorizing a loan production office to engage in any activity that a loan production office is not authorized to engage in under Section 7-1-715.

Amended by Chapter 327, 2003 General Session

7-1-709. Branches -- Discontinuance of operation.

(1) A Utah depository institution or out-of-state depository institution authorized to do business in this state may discontinue operation of a branch upon resolution of its board of directors.

(2) Upon adopting the resolution, the institution shall file an application with the commissioner specifying:

(a) the location of the branch to be discontinued;

(b) the date of the proposed discontinuance;

(c) the reasons for closing the branch; and

(d) the extent to which the public need and convenience or service to members would still be adequately met.

(3) (a) Upon filing its application with the commissioner, the institution shall publish notice of the discontinuance:

(i) in a newspaper serving the area once a week for two consecutive weeks; and

(ii) as required by Section 45-1-101 for two weeks.

(b) The commissioner may approve the application after a reasonable comment period following publication.

(4) An out-of-state depository institution with a branch in Utah is not subject to the requirements of this section if the branch to be closed is located outside of Utah.

Amended by Chapter 388, 2009 General Session

7-1-710. "Agency" defined -- Purposes and establishment of agency.

(1) As used in this section, "agency" means a place, person, or facility, stationary or mobile, other than the home office or a branch office:

(a) where functions of the financial institution not involving the receiving or paying of deposits, making of loans or the handling of cash may be performed;

(b) established for individual transactions and for special temporary purposes;

(c) established for the purposes set forth in Sections 7-1-608 and 7-1-609; or

(d) established to perform the functions of a financial institution service corporation.

(2) A financial institution may establish one or more agencies without the prior written approval of the commissioner. Within 30 days of the establishment of an agency, the financial institution shall inform the commissioner in writing of the address of the agency and the specific functions for which it was established.

(3) No agency may be converted to a branch without compliance with Section 7-1-708.

Amended by Chapter 189, 2014 General Session

7-1-711. Mobile facilities -- Approval required for operation.

No financial institution may operate a mobile facility in this state at which deposits are received, checks paid, or money lent without the prior written approval of the commissioner.

Amended by Chapter 133, 1991 General Session

7-1-712. Acquisition of office of another financial institution.

Any financial institution authorized to do business in this state may acquire an office of any other financial institution located in this state upon obtaining the prior written approval of the commissioner in the manner provided in Section 7-1-708 for the establishment of a branch.

Amended by Chapter 1, 1986 General Session

7-1-713. Conversion of financial institution -- Approval required -- Procedure -- Federal-state conversion.

(1) Any financial institution authorized to do business as a particular class of financial institution under any chapter of this title may convert to an institution authorized to do business under another chapter by applying to the department for approval in the manner provided in Section 7-1-706.

(2) If the commissioner approves the conversion, the institution shall immediately surrender its former charter to the commissioner. Under its new charter as a financial institution of a different class, it is entitled to all the benefits and powers conferred under the applicable chapter to other financial institutions of that class and is subject to examination, supervision, and regulation to the same extent as all other financial institutions of that class.

(3) Any depository institution organized under the laws of this state may convert to a depository institution organized under the laws of the United States upon compliance with the laws of the United States and upon surrender of its charter to the commissioner.

(4) Any depository institution organized under the laws of the United States or any other state that is authorized to do business in this state may convert into a depository institution subject to the jurisdiction of the department by applying to the department for approval in the manner provided in Section 7-1-706.

Amended by Chapter 200, 1994 General Session

7-1-714. Judicial review of acts of commissioner -- Hearing by court.

(1) Any person aggrieved by any rule, regulation, order, decision, or ruling or other act or failure to act of the commissioner under this title is entitled to judicial

review.

(2) Judicial review of other agency actions shall be governed by the procedures and requirements of this subsection.

(a) Within 30 days after receipt of notice of a rule, order, or other decision or ruling not arising from an adjudicative proceeding, or within 120 days after the commissioner has failed to act upon a request or application, the aggrieved person may file an application for judicial review with a court of competent jurisdiction in the county in which the applicant is located, or in the county where the office of the commissioner is located, and may request an immediate hearing on the act or failure to act.

(b) The court shall require adequate notice to be served on the commissioner and all other interested parties and shall give the petition for review precedence on its calendar.

(c) The court shall review the record before the commissioner and shall adjudicate the question, enter appropriate orders, and enforce them.

(d) The court may declare void any rule, regulation, order, decision, ruling, or other act of the commissioner it finds to be arbitrary, capricious, an abuse of discretion, or otherwise contrary to law.

(3) Any action for judicial review of acts or failure to act of the commissioner shall be heard by the court and shall be based on the record made before the department.

Amended by Chapter 161, 1987 General Session

7-1-715. Loan production offices -- Application and procedure for approval.

(1) With the prior approval of the commissioner, a depository institution may establish one or more loan production offices.

(2) A loan production office shall be staffed and accessible to the public.

(3) A loan production office may:

(a) solicit loans on behalf of its depository institution;

(b) assemble credit information;

(c) make property inspections and appraisals;

(d) secure title information;

(e) prepare applications for loans;

(f) solicit investors to purchase loans from the depository institution;

(g) seek to have these investors contract with a depository institution for servicing the loans; and

(h) engage in other activities in the nature of acting as an agent for the parent depository institution in facilitating the production of loans.

(4) A loan production office may not do any of the following:

(a) accept deposits;

(b) originate deposit, savings, or share accounts;

(c) pay checks;

(d) approve loans; or

(e) disburse loan funds.

(5) A loan processed by a loan production office may only be approved at the

main office or approved branch of the depository institution, except a loan production office may make a recommendation, subject to independent analysis and approval by the depository institution.

(6) Funds from a loan processed by a loan production office may only be disbursed at the main office or approved branch of the depository institution, or at the office of an independent third party, such as a title company or escrow agent.

(7) Although a loan production office is not considered a branch, the establishment of a loan production office is subject to the prior approval of the commissioner in the manner provided in Section 7-1-708 for the establishment of a branch office.

(8) Each depository institution with operating loan production offices in Utah as of June 1, 1994, shall file an initial registration with the department stating the location of each loan production office on or before July 15, 1994. All subsequent applications for a loan production office require prior approval of the commissioner.

(9) If the commissioner determines that it is in the public interest, the department may examine the books and records of the office at the per diem charge established in Section 7-1-401.

Amended by Chapter 49, 1995 General Session

7-1-716. Affiliate depository institutions acting as agents -- Notification required.

(1) Any depository institution may, at its main office or at any branch, act as an agent of any other depository institution that is a subsidiary of the same depository institution holding company in conducting the activities authorized under this section.

(2) This section applies regardless of whether the affiliate depository institutions have the same home state.

(3) A depository institution acting as agent for an affiliate depository institution may:

- (a) receive deposits;
- (b) renew time deposits;
- (c) engage in the activities authorized for a loan production office under Section 7-1-715;

(d) service loans; and

(e) receive payments on loans and other obligations.

(4) A depository institution may not do any of the following as an agent on behalf of an affiliate depository institution:

- (a) open or originate deposit, savings, or share accounts;
- (b) evaluate or approve loans;
- (c) disburse loan funds; or
- (d) conduct any activity as an agent that it is prohibited from conducting as a principal under any applicable law.

(5) A depository institution acting as a principal may not have an affiliate depository institution act as its agent in conducting any activity that:

- (a) the principal depository institution is prohibited from conducting; or
- (b) the agent depository institution would be prohibited from conducting as a

principal.

(6) An agency relationship between affiliates under this section shall be consistent with safe and sound practices and shall comply with all applicable law.

(7) A depository institution acting as an agent is not considered to be a branch of the affiliate solely because of activities conducted under this section.

Enacted by Chapter 49, 1995 General Session

7-1-801. False statement derogatory to financial condition of depository institution a misdemeanor -- Exemptions.

(1) Any person who willfully and knowingly makes or circulates or transmits to another any statement or rumor, written, printed, or by word of mouth, which is untrue in fact and is directly or by inference derogatory to the financial condition or standing of any depository institution, or who knowingly counsels, aids, procures, or induces another to state, transmit, or circulate any such statement or rumor, is guilty of a class B misdemeanor.

(2) Subsection (1) does not apply to the exchange of information between personnel of the department and the personnel of other regulatory and deposit insurance agencies in the discharge of regulatory duties, which communications are considered absolutely privileged.

Amended by Chapter 200, 1994 General Session

7-1-802. Confidentiality of information received by department -- Availability of information.

(1) The commissioner shall receive and place on file in the department's office all reports required by law and shall certify all reports required to be published.

(2) Except as provided in this section, the following are confidential, not public records, and not open to public inspection:

- (a) all reports received or prepared by the department;
- (b) all information obtained from an institution or person under the jurisdiction of the department; and
- (c) all orders and related records of the department.

(3) The following records and information are public and are open to public inspection:

- (a) reports of condition required by Section 7-1-318;
- (b) information that is otherwise generally available to the public; and
- (c) information contained in, and final decisions on, an application filed under Sections 7-1-702, 7-1-703, 7-1-704, 7-1-705, 7-1-706, 7-1-708, 7-1-709, 7-1-712, 7-1-713, or Chapter 19, Acquisitions of Failing Repository Institutions or Holding Companies, excluding:

- (i) proprietary information, business plans, and personal financial information; and
- (ii) information for which:
 - (A) the applicant requests confidentiality; and
 - (B) the commissioner grants the request for confidentiality.

(4) The department may disclose records and information that are not public to the following:

(a) to an agency or authority:

(i) that regulates:

(A) the subject of the record; or

(B) an affiliate of the subject of the record, as defined by the commissioner by rule; and

(ii) is of:

(A) the federal government;

(B) the state; or

(C) another state;

(b) to a federal deposit insurance agency;

(c) to an official legally authorized to investigate criminal charges in connection with the affairs of the subject of the record, and to any tribunal conducting legal proceedings resulting from such an investigation;

(d) to a person preparing a proposal for merging or acquiring an institution under Chapter 2, Possession of Depository Institution by Commissioner, or Chapter 19, Acquisition of Failing Repository Institutions or Holding Companies, but only after the department provides notice of the disclosure to the institution;

(e) to any other person, if the commissioner determines, after notice to the institution or person that is the subject of the record and opportunity for hearing, that the interests favoring disclosure of the information outweigh the interests favoring confidentiality of the information; and

(f) to any court in a proceeding under:

(i) Sections 7-1-304, 7-1-320, 7-1-322; or

(ii) a supervisory action under Chapter 2, Possession of Depository Institution by Commissioner, or Chapter 19, Acquisition of Failing Repository Institutions or Holding Companies.

(5) The commissioner may limit the use and further disclosure of any information disclosed under Subsection (4):

(a) to protect the business confidentiality interest of the subject of the record; and

(b) to protect the public interest, such as to avoid:

(i) a liquidity crisis in a depository institution; or

(ii) undue speculation in securities or currency markets.

(6) The department shall disclose information in the manner and to the extent directed by a court order signed by a judge from a court of competent jurisdiction if:

(a) the disclosure does not violate applicable federal or state law;

(b) the information to be disclosed deals with a matter in controversy over which the court has jurisdiction;

(c) the person requesting the order has provided reasonable prior written notice to the commissioner;

(d) the court has considered the merits of the request for disclosure and has determined that the interests favoring disclosure of the information outweigh the interests favoring confidentiality of the information; and

(e) the court has appropriately limited the use and further disclosure of the

information:

- (i) to protect the business confidentiality interest of the subject of the record; and
- (ii) to protect the public interest, such as to avoid:
 - (A) a liquidity crisis in a depository institution; or
 - (B) undue speculation in securities or currency markets.

Amended by Chapter 189, 2014 General Session

7-1-803. Conflicting interests of commissioner, supervisors, and examiners -- Loans and accounts -- Disclosure -- Penalty.

(1) Neither the commissioner nor any supervisor or examiner may do any of the following with respect to any institution under the supervision of the department:

- (a) be indebted, directly or indirectly, as a borrower, accommodation endorser, surety, or guarantor to an institution, or to an individual or any other legal or commercial entity owning or controlling an institution;
- (b) be an officer, director, or employee of any institution or of an individual or any other legal or commercial entity owning or controlling an institution;
- (c) own or deal in, directly or indirectly, the shares or obligations of an institution or of a corporation owning or controlling an institution;
- (d) receive, directly or indirectly, from an institution or any officer, director, or employee of an institution, any salary, fee, or compensation; or
- (e) be interested in or engage in the negotiations of any loan to, obligation of, or accommodation for another person to or with an institution.

(2) Notwithstanding Subsection (1), the commissioner, any supervisor, or any examiner of the department may:

(a) have and maintain savings, transaction, share, time deposit, or other accounts, or certificates and deposits in any financial or depository institution in the state, or be a lessee of a safe deposit box on the same terms and conditions available to the public generally;

(b) be indebted to a depository institution under the supervision of the department on terms offered to the public generally upon:

- (i) a mortgage loan upon the mortgagor's own home;
 - (ii) an open or closed end consumer loan granted before the person became employed with the department or before the institution became subject to the jurisdiction of the department;
 - (iii) in the case of a supervisor or examiner, a consumer loan lawfully made prior to January 1, 1991, provided that while the debt is subject to the provisions of this chapter, the terms of the debt are not changed in favor of the debtor in a manner not offered and provided to other creditworthy borrowers or waived or extended as a result of delinquency or default; and
 - (iv) a debt fully secured at all times by deposits in the institution;
- (c) be indebted on an installment debt transferred to an institution under the jurisdiction of the department in the regular course of business by a seller of consumer goods; and
- (d) continue to receive payments under a regularly established pension plan of general application for fully retired employees of an institution under the supervision of

the department.

(3) Full disclosure in writing of any indebtedness incurred under Subsection (2) shall be filed in the commissioner's office.

(4) Any person who knowingly violates this section with the intention of getting gain through the influence of his office shall forfeit the office or employment and is guilty of a third degree felony.

Amended by Chapter 200, 1994 General Session

7-1-806. Money market funds arranging with bank to honor two-party instruments -- Discouraging payment of interest to two persons on funds in transit -- Pyramiding and similar schemes as misdemeanors.

Nothing in this act shall be construed to prevent money market funds from making arrangements with banks to honor two party checks, drafts, or other instruments.

The commissioner shall exert his influence to discourage banks, money market funds and other programs in Utah and throughout the United States from paying interest to two persons at the same time on funds in the process of transfer.

The process or the practice referred to as pyramiding or any similar process or practice as defined by the commissioner, and such definition is approved by the governor, shall be prohibited within this state and persons found guilty of these schemes shall be found guilty of a class C misdemeanor. This does not preclude more serious punishment under federal law.

Money market funds, similar funds and bank regulated institutions shall cooperate with the commissioner to stop these practices.

Amended by Chapter 378, 2010 General Session

7-1-807. Printed checks, drafts and orders -- Requirements -- Violation as misdemeanor.

Every check, draft, order, or other like instrument printed for a customer of any institution issuing transaction accounts in the state as part of a series after the effective date of this act shall have on its face the name and address of the account holder, the month and year the account was opened, and the number of the check, draft, order, or other like instrument in unbroken, sequential, numerical order, beginning with the number 101, except for initial deposits to open a new account or in case of lost or stolen checks when a limited supply of unnumbered counterchecks may be issued. Any person who violates this section is guilty of a class C misdemeanor.

Enacted by Chapter 56, 1983 General Session

7-1-808. Closing days for depository institutions.

(1) Depository institutions shall be closed to the general public on Sundays.

(2) (a) The commissioner may designate any additional or different day on which depository institutions are closed to the general public, such as in the event of:

(i) an emergency;

- (ii) disaster;
 - (iii) flood;
 - (iv) earthquake;
 - (v) fire;
 - (vi) power outage;
 - (vii) heavy snow;
 - (viii) other impediment to:
 - (A) business; or
 - (B) the safety of customers and employees; or
 - (ix) any circumstance in which closing on an additional or different day serves the public interest.
- (b) The commissioner may designate a day under Subsection (2)(a) as applying to all or any portion of the state.
- (3) (a) A depository institution may elect to be open or closed to the general public during business hours of its choosing on any day not designated under this section as a day for closing.
- (b) A depository institution shall provide adequate notice to its customers or members of any change from normal business hours.

Amended by Chapter 260, 2000 General Session

7-1-809. Articles of incorporation -- Amended or restated articles of incorporation -- Prerequisites to filing.

- (1) The Division of Corporations and Commercial Code may not file articles of incorporation that state that the purpose of the corporation is to transact business as a depository institution or to hold a corporation that will transact business as a depository institution until the department certifies that it has reviewed and does not object to the articles of incorporation.
- (2) A corporation whose articles of incorporation have been filed with the Division of Corporations and Commercial Code pursuant to Subsection (1) may not transact business as a depository institution without authorization from the department in accordance with Section 7-1-705.
- (3) The Division of Corporations and Commercial Code may not file articles of amendment or articles of restatement of a depository institution or depository institution holding company until the department has certified that it has reviewed and does not object to the articles of amendment or articles of restatement.

Enacted by Chapter 182, 1996 General Session

7-1-810. Limited liability companies.

- (1) Notwithstanding any other provision of this title and subject to Subsection (8), if the conditions of this section are met, the following may be organized as or convert to a limited liability company under Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Act, as appropriate pursuant to Section 48-3a-1405:
- (a) an industrial bank chartered under Chapter 8, Industrial Banks;

(b) an industrial loan company as defined in Section 7-8-21; or
(c) any of the following if the institution is an S Corporation, as defined in Section 1361, Internal Revenue Code, immediately before becoming a limited liability company:

- (i) a bank chartered under Chapter 3, Banks; or
- (ii) a depository institution holding company.

(2) (a) Before an institution described in Subsection (1) may organize as or convert to a limited liability company, the institution shall obtain approval of the commissioner.

(b) (i) To obtain the approval under this section from the commissioner, the institution shall file a request for approval with the commissioner at least 30 days before the day on which the institution becomes a limited liability company.

(ii) If the commissioner does not disapprove the request for approval within 30 days from the day on which the commissioner receives the request, the request is considered approved.

(iii) When taking action on a request for approval filed under this section, the commissioner may:

(A) approve the request;

(B) approve the request subject to terms and conditions the commissioner considers necessary; or

(C) disapprove the request.

(3) To approve a request for approval, the commissioner shall find:

(a) for an institution described in Subsection (1) that is required to be insured by a federal deposit insurance agency, that the institution:

(i) will operate in a safe and sound manner;

(ii) has the following characteristics:

(A) the institution is not subject to automatic termination, dissolution, or suspension upon the happening of some event other than the passage of time;

(B) the exclusive authority to manage the institution is vested in a board of managers or directors that:

(I) is elected or appointed by the owners;

(II) is not required to have owners of the institution included on the board;

(III) possesses adequate independence and authority to supervise the operation of the institution; and

(IV) operates with substantially the same rights, powers, privileges, duties, and responsibilities as the board of directors of a corporation;

(C) neither state law, nor the institution's operating agreement, bylaws, or other organizational documents provide that an owner of the institution is liable for the debts, liabilities, and obligations of the institution in excess of the amount of the owner's investment; and

(D) (I) neither state law, nor the institution's operating agreement, bylaws, or other organizational documents require the consent of any other owner of the institution in order for an owner to transfer an ownership interest in the institution, including voting rights; and

(II) the institution is able to obtain new investment funding if needed to maintain adequate capital; and

(iii) is able to comply with all legal and regulatory requirements for an insured depository institution under applicable federal and state law; and

(b) for an institution described in Subsection (1) that is not required to be insured by a federal deposit insurance agency, that the institution will operate in a safe and sound manner.

(4) An institution described in Subsection (3)(a) that is organized as a limited liability company shall maintain the characteristics listed in Subsection (3)(a)(ii) during such time as it is authorized to conduct business under this title as a limited liability company.

(5) (a) All rights, privileges, powers, duties, and obligations of an institution described in Subsection (1) that is organized as a limited liability company and its members and managers shall be governed by Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405 except:

(i) the following do not apply to an institution that is described in Subsection (3)(a):

- (A) Subsection 48-2c-402(2)(a)(ii);
- (B) Section 48-2c-604;
- (C) Section 48-2c-703;
- (D) Section 48-2c-708;
- (E) Subsection 48-2c-801(2);
- (F) Section 48-2c-1102;
- (G) Section 48-2c-1104; and
- (H) Subsections 48-2c-1201(2) through (5);

(ii) the following do not apply to an institution that is described in Subsection (3)(a):

- (A) Section 48-3a-111;
- (B) Section 48-3a-113;
- (C) Section 48-3a-201;
- (D) Section 48-3a-401;
- (E) Subsections 48-3a-407(1) and (3)(c);
- (F) Section 48-3a-410;
- (G) Subsection 48-3a-502(1)(c);
- (H) Title 48, Chapter 3a, Part 6, Dissociation;
- (I) Section 48-3a-701; and
- (J) Title 48, Chapter 3a, Part 9, Foreign Limited Liability Companies; and
- (iii) as otherwise provided in this title.

(b) Notwithstanding Subsection (5)(a), for an institution that is described in Subsection (3)(a):

(i) for purposes of transferring a member's interests in the institution, a member's interest in the institution shall be treated like a share of stock in a corporation; and

(ii) if a member's interest in the institution is transferred voluntarily or involuntarily to another person, the person who receives the member's interest shall obtain the member's entire rights associated with the member's interest in the institution including:

- (A) all economic rights; and
- (B) all voting rights.
- (c) An institution described in Subsection (3)(a) may not by agreement or otherwise change the application of Subsection (5)(a) to the institution.
- (6) Unless the context requires otherwise, for the purpose of applying this title to an institution described in Subsection (1) that is organized as a limited liability company:
 - (a) a citation to Title 16, Chapter 10a, Utah Revised Business Corporation Act, includes the equivalent citation to Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405;
 - (b) "articles of incorporation" includes a limited liability company's certificate of organization as that term is used in Section 48-2c-403 or Section 48-3a-201, as appropriate pursuant to Section 48-3a-1405;
 - (c) "board of directors" includes one or more persons who have, with respect to an institution described in Subsection (1), authority substantially similar to that of a board of directors of a corporation;
 - (d) "bylaws" includes a limited liability company's operating agreement as that term is defined in Section 48-2c-102 or Section 48-3a-201, as appropriate pursuant to Section 48-3a-1405;
 - (e) "corporation" includes a limited liability company organized under Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Act, as appropriate pursuant to Section 48-3a-1405;
 - (f) "director" includes any of the following of a limited liability company:
 - (i) a manager;
 - (ii) a director; or
 - (iii) other person who has with respect to the institution described in Subsection (1), authority substantially similar to that of a director of a corporation;
 - (g) "dividend" includes distributions made by a limited liability company under Title 48, Chapter 2c, Part 10, Distributions, or Title 48, Chapter 3a, Part 4, Relations of Members to Each Other and to Limited Liability Company, as appropriate pursuant to Section 48-3a-1405;
 - (h) "incorporator" includes an organizer of a limited liability company as provided in Title 48, Chapter 2c, Part 4, Formation, or Title 48, Chapter 3a, Part 2, Formation -- Certificate of Organization and Other Filings, as appropriate pursuant to Section 48-3a-1405;
 - (i) "officer" includes any of the following of an institution described in Subsection (1):
 - (i) an officer; or
 - (ii) other person who has with respect to the institution described in Subsection (1) authority substantially similar to that of an officer of a corporation;
 - (j) "security," "shares," or "stock" of a corporation includes:
 - (i) a membership interest in a limited liability company as provided in Title 48, Chapter 2c, Part 7, Members, or Title 48, Chapter 3a, Part 4, Relations of Members to Each Other and to Limited Liability Company, as appropriate pursuant to Section 48-3a-1405; and
 - (ii) a certificate or other evidence of an ownership interest in a limited liability

company; and

(k) "stockholder" or "shareholder" includes an owner of an interest in an institution described in Subsection (1) including a member as provided in Title 48, Chapter 2c, Part 7, Members, or Title 48, Chapter 3a, Part 4, Relations of Members to Each Other and to Limited Liability Company, as appropriate pursuant to Section 48-3a-1405.

(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner shall make rules governing the form of a request for approval filed under this section.

(8) A depository institution organized under the laws of this state may not be organized as or converted to a series of transferable interests in a limited liability company as provided in Section 48-2c-606, or Title 48, Chapter 3a, Part 12, Series Limited Liability Companies, as appropriate pursuant to Section 48-3a-1405.

Amended by Chapter 73, 2013 General Session

Amended by Chapter 73, 2013 General Session

Amended by Chapter 412, 2013 General Session

7-1-901. Authorized insurance activities of depository institutions.

(1) A depository institution authorized to do business in this state under this title may directly, or indirectly through a subsidiary or affiliate, engage in the following insurance activities:

(a) engage in the insurance business as defined under Section 31A-1-301 except as may be limited by federal law;

(b) act as an insurance producer or consultant as defined under Section 31A-1-301; or

(c) engage in insurance adjusting as defined in Section 31A-26-102.

(2) A depository institution, subsidiary, or affiliate, that engages in insurance activities authorized under Subsection (1) shall be subject to Title 31A, Insurance Code.

Amended by Chapter 298, 2003 General Session

7-1-1001. Definitions -- Written consent or court order for disclosure by financial institution -- Exception.

(1) As used in this part:

(a) "Account holder" means a person for whom an account is held by a financial institution.

(b) "Governmental entity" means:

(i) the state, including:

(A) a department;

(B) an institution;

(C) a board;

(D) a division;

(E) a bureau;

(F) an office;

(G) a commission;

- (H) a committee; or
- (I) an elected official; and
- (ii) a political subdivision of the state, including:
 - (A) a county;
 - (B) a city;
 - (C) a town;
 - (D) a school district;
 - (E) a public transit district;
 - (F) a redevelopment agency;
 - (G) a special improvement district; or
 - (H) a taxing district.

(c) "Nonprotected record" means a record maintained by a financial institution to facilitate the conduct of the financial institution's business regarding a person or account, including:

- (i) the existence of an account;
 - (ii) the opening and closing dates of an account;
 - (iii) the name under which an account is held; and
 - (iv) the name, address, and telephone number of an account holder.
- (d) "Protected record" means a record that is not defined as a nonprotected record.

(e) "Record" means information that is:

- (i) prepared, owned, received, or retained by a financial institution;
- (ii) (A) inscribed on a tangible medium; or
- (B) stored in an electronic or other medium; and
- (iii) retrievable in perceivable form.

(2) Except for a governmental entity listed in Subsection 7-1-1006(1), an individual acting on behalf of a governmental entity may not request, obtain by subpoena, or otherwise obtain information from a state or federally chartered financial institution that constitutes a record reflecting the financial condition of any person without first obtaining:

- (a) written permission from all account holders of the account referenced in the record to be examined; or
- (b) an order from a court of competent jurisdiction permitting access to the record.

(3) This section does not apply to a review made by the commissioner to determine whether a financial institution is operating in accordance with law.

Amended by Chapter 381, 2009 General Session

7-1-1002. Notice to person about whom information sought.

(1) (a) If a court order is obtained pursuant to Section 7-1-1001, the governmental entity that obtained the order shall notify the person about whom information is sought that a court order has been obtained:

- (i) within three days of the day on which service of the order is made upon the financial institution; and
- (ii) no later than seven days before the day fixed in the order as the day upon

which the records are to be produced or examined.

- (b) The notice required by Subsection (1)(a) shall be accompanied by:
 - (i) a copy of the order that has been served upon the financial institution;
 - (ii) a copy of the motion or application upon which the order is based; and
 - (iii) a statement setting forth the rights of the person under Section 7-1-1003.

(2) (a) The notice shall be sufficient if, on or before the third day after issuance of the order, notice is:

- (i) served in the manner provided in Rule 4 (d), Utah Rules of Civil Procedure, upon the person entitled to notice; or
- (ii) mailed by certified or registered mail to the last-known address of the person entitled to notice.

(b) Notwithstanding Subsection (2)(a), if the person entitled to notice is deceased or under legal disability, notice shall be served upon or mailed to the last-known address of that person's executor, administrator, guardian, or other fiduciary.

Renumbered and Amended by Chapter 3, 2008 General Session

7-1-1003. Intervention to challenge or stay order -- Burden on governmental entity.

(1) Notwithstanding any other law or rule of law, any person who is entitled to notice of a court order under Section 7-1-1002 shall have the right to intervene in any proceeding with respect to enforcement of the order to:

- (a) challenge the issuance of the order; or
- (b) stay compliance with the order.

(2) Upon intervention, the burden shall be on the governmental entity obtaining the order to show that there is reasonable cause for the issuance of the order.

Renumbered and Amended by Chapter 3, 2008 General Session

7-1-1004. Reimbursement of financial institution for costs of obtaining information.

(1) A financial institution is entitled to reimbursement by a governmental entity seeking information, for costs reasonably and directly incurred in searching for, reproducing, or transporting a record required to be produced if the financial institution produces the record:

(a) pursuant to written permission by all account holders of the account referenced in the record in accordance with:

- (i) Subsection 7-1-1001(2)(a); or
- (ii) Subsection 7-1-1006(2)(b)(iii);
- (b) in compliance with an order obtained under this part; or
- (c) in compliance with an order of a court or administrative body of competent jurisdiction.

(2) The commissioner shall by rule establish the rates and conditions under which a governmental entity shall reimburse a financial institution.

Amended by Chapter 381, 2009 General Session

7-1-1005. Admissibility of information restricted.

(1) Information obtained directly or indirectly from a financial institution in violation of Sections 7-1-1001 through 7-1-1003 may not be admissible in any court of this state against the person entitled to notice.

(2) This section does not apply in any action:

(a) between the financial institution and the person otherwise entitled to notice;
or

(b) in which it is claimed that the financial institution has been the victim of fraud, embezzlement or any other criminal act committed by the person otherwise entitled to notice.

Renumbered and Amended by Chapter 3, 2008 General Session

7-1-1006. Inapplicable to certain official investigations.

(1) Sections 7-1-1002 and 7-1-1003 do not apply if an examination of a record is a part of an official investigation by:

(a) local police;
(b) a sheriff;
(c) a peace officer;
(d) a city attorney;
(e) a county attorney;
(f) a district attorney;
(g) the attorney general;
(h) the Department of Public Safety;
(i) the Office of Recovery Services of the Department of Human Services;
(j) the Insurance Department;
(k) the Department of Commerce;
(l) the Benefit Payment Control Unit or the Payment Error Prevention Unit of the Department of Workforce Services;
(m) the state auditor;
(n) the State Tax Commission; or
(o) the Department of Health or its designee, when undertaking an official investigation to determine whether an individual qualifies for certain assistance programs as provided in Section 26-18-2.5.

(2) Except for the Office of Recovery Services, if a governmental entity listed in Subsection (1) seeks a record, the entity shall obtain the record as follows:

(a) if the record is a nonprotected record, by request in writing that:
(i) certifies that an official investigation is being conducted; and
(ii) is signed by a representative of the governmental entity that is conducting the official investigation; or
(b) if the record is a protected record, by obtaining:
(i) a subpoena authorized by statute;
(ii) other legal process:
(A) ordered by a court of competent jurisdiction; and

(B) served upon the financial institution; or
(iii) written permission from all account holders of the account referenced in the record to be examined.

(3) If the Office of Recovery Services seeks a record, the Office of Recovery Services shall obtain the record pursuant to:

- (a) Subsection 62A-11-104(1)(g);
- (b) Section 62A-11-304.1;
- (c) Section 62A-11-304.5; or
- (d) Title IV, Part D of the Social Security Act as codified in 42 U.S.C. 651 et seq.

(4) A financial institution may not give notice to an account holder or person named or referenced within the record disclosed pursuant to Subsection (2)(a).

(5) In accordance with Section 7-1-1004, the governmental entity conducting the official investigation that obtains a record from a financial institution under this section shall reimburse the financial institution for costs reasonably and directly incurred by the financial institution.

Amended by Chapter 344, 2011 General Session

7-1-1007. Liability of financial institutions.

A financial institution is not liable to an account holder or person named or referenced within a record:

(1) for a disclosure that is the result of a subpoena, order, or request made pursuant to Sections 7-1-1001 through 7-1-1006 if the financial institution reasonably believes that the subpoena, order, or request is properly made under Sections 7-1-1001 through 7-1-1006; or

(2) for a disclosure or action taken in good faith pursuant to a data match or administrative subpoena provided for by a statute listed in Subsection 7-1-1006(3).

Amended by Chapter 381, 2009 General Session